

THE
Bounds & bonds
OF
Publique Obedience.
OR,

A Vindication of our lawfull submission to the present Government, or to a government supposed unlawfull, but commanding lawfull things.

Likewise how such an obedience is consistent with our Solemne League and Covenant.

In all which a Reply is made to the three Answers of the two Demurrers, and to the Author of the grand Case of Conscience, who professe themselves impassionate Presbyterians.

*Mistaken Principles
are but sandy founda-
tions, such are the princi-
ples of this book, & build-
ing therefore must needs
be faulty.*

London printed for John Wright at the Kings Head
in the Old-Bayley, 1649,



THE
Bounds and Bonds
OF
publique obedience,
OR
A vindication of our lawfull sub-
mission to the present Government,
or to a Government supposed unlawfull,
but commanding lawfull things.



I know not by what fate or misfortune it comes to passe, that in the disquisition of a truth (though a simple uniforme thing) yet the contests about it, are usually infinite, and it is as difficult a thing to disincumber it from errors, as it is a good field from weeds and brambles; which when the country man hath burnt to ashes, and thinks he hath quite destroyed, the next yeare to his astonishment he sees them return more numerous then before. Surely our unhappinesse in the E. a.

whence the
difficulty of
perswading
civill truth.

dication of civill errors is, that we speake more to the affections then to the Judgement, and therefore offer passion in stead of reason, or make one but the counterfeite of the other, or else not affecting one anothers persons, we sling headily into opposite paths or principles, in which not treading together at first, we cannot possibly meet together at last, and in this aberration we loose both truth and our selves.

Thus we finde it in these three severall answers to the first Treatise, in which (and the unhappilier, to give foundation to practicable errors) they at the very entry of the controversie mistake principles, in jure publico, in the riginall of Magistracy and Government, in the nature of possession, prescription, right of extream necessity, of assertory & promissory Oaths, &c. things which were otherwaies stated and proved in that discourse to which they have bin referred; I should not so disertly tell these tripartite answerers, that they do *suponere quodlibet*, ut *Probatur quidlibet*, were it not but that I see them so Majesterially peremptory to prescribe to others, and to necessitate us into action of the greatest prejudice that may be betwixt man & man; that I finde one of them give such a losse to his passion, that it carries him into direct Blasphemy, advising that a Committee might treat with God, yea sentence the blessed Trinity. Lastly because all the world knows they give that obedience which to attaine publique desolation they will not allow toothers; wherefore as the subtilties of the vapours are so fine and delicate, that they passe upwards on every hand about us imperceptibly till at last we heare them over our heads formd into Thunder, Lightning and Tempests, even so the fumes of these private mens Passions passe so subtilly through their soft words, that if we who converse with them, be not maturely advisd of them, their insinuation will draw us into fire and flame, into blood and desolation, into the Calamities of a war, which perhaps may end as distantly from our and their now Covenant intentions as the two former have already done.

The Question which was first asserted stands still unshaken and almost untoucht, and in all these answers it is evidently granted, That we of the people may lawfully give

(3)

give obedience to an unlawfull power; this onely is denied, That it may be not with an acknowledgement of their authority and right, which is very uncaſuittly and unconſcientiouſly infered here, becauſe that is not the Peo-^{Demur. p 6.}
^{caſe of Con. p.}
^{3. 7. 2}
ples preſent caſe, but the Governours, theſe onely aſſerting that, contenting themſelves with ſim- ple obedience from us.

The firſt Argument of the firſt Demurrer is formed a-
gainſt the incapacity of the perſons governing, and it runs
thus : ^{Pag. 2.}

Ob. That which is now termed a Parliament, is neither formally, materially, nor effectually a Parliament, ſuch as is requiſite for this Kingdom, either according to the mind of God, or the neceſſities of the State. Firſt, becauſe the change which is made in it, is not made by thoſe who firſt conſtituted it, unleſſe it be by conqueſt. The modern modell contains not the whole, nor the major part of the people Secondly, the alteration is made by the Commons only, the Nobility as illuſtrior pars populi, appeared not in it.

Anſ. Though this Argument (with the reſt) relates more
to the Commanders than to the obeyers, (of whom our
controversie onely is) and that we of the People have a
right to do lawfull things, though there were no Magi-
ſtrate lawfull or unlawful to overſee us, yet I ſhall not ſtop
at theſe advantages, but oppoſe to the main of this Argu-
ment, the main of our Creation and conſervation. For
we have nothing elſe to doe in the world, but to praiſe
God and love our neighbour. The circumſtance of the
Magiſtrate is onely to be an encouragement of this, and
to ſee that it be done with ſecurity : and if he doe this
(whatever he be) we are beholding to him, and ſhould
praiſe God for him, and then why not obey him ? <sup>The end of Ma-
giſtracy, ſub-
ſervient to the
end of our be-
ing.</sup>

Though this were granted, That one Magiſtrate
was unjuſtly ejected by another, and one government by
another, yet that relates onely to thoſe who co-operated
in it whiſt it was doing. How can ſuch a ſuppoſed guilt
in them, be in any part continued upon, and aſcribed to

us of the low ranke of the people? or now especially that we come into it after it is done, and after we are under the full possession of a present Power? People by the effects of it, sustaine punishment enough if they lose a good Magistracy, must they likewise be punished because it is lost, though they were no con-cause of it?

The Authour of the Grand Case of Conscience, p. 10. infers *Yes*, and therefore makes our new commotions necessary: *because we can do nothing just in a State, where, (through the defect of a legal Magistracy) we can have no justice, yea though the things we do be in themselves just. For (quoth he) judgement is then onely just, when it is exercised by the higher Powers, the legall Magistracy of that Kingdome, where it is acted.*

All justice or just things relate not essentially to the legall Magistrate.

Of commutative justice
Vid. p. 26. 35.

1 Cor. 6.
of distributive justice.

I answer, things are considerable, onely so far as they may reach the ends for which they are. The end of every Magistrate is to see justice executed in case it be violated: *Iusto enim non ponitur lex.* The end of justice is to be a measure of equity, that is, of equality. Justice or the proportion of equality is either commutative or distributive. But neither of these relate so essentially to the legall Magistrate, that nothing may be done truly and conscientiously just, without he co-operate in it. As for *commutative equality*, if *Titius* lend *Sempronius* ten bushels of such a quantity, which bushels have the publique mark upon them, and *Sempronius* pay him ten other every way of the same equality, but that there wants the former mark, or that the said bushels have another mark, will you say *Sempronius* hath not intrinsically done *Titius* justice, or hath not justly satisfied him in his quantity? especially if in the mean time no more of that former marke can be had? As for *distributive justice*, we know that *St. Paul* advised the *Corinthians* to avoyd the legall Magistracy and the judgement of the higher powers of that Countrey, and rather to end things by arbitrement among themselves, which had been an advice unjust, and to the scandall of Christianity, if things in themselves just might not be

be done but by the justice of the legall Magistrate. This therefore is but according to an old Axiome of justice,
Provisio hominis tollit provisionem legis.

Thus much I have thought fit to answer in generall to this objection; but now more particularly I answer to its terms. And first, why is not this effectually a Parliament, seeing it is the Supream present power of the whole Nation, no part excluded? which in this controversie is the very term of the question. I hope he means no Criticisme by the word Parliament; if he doth, it signifies onely a publique speaking or consulting together for the Publique. Moreover, the Authour would be (I am sure) much perplext, if I should aske him, *how he knoweth so indubitably that this is not a Parliament or supream Power requisite for this Kingdome, according to the mind of God?* He must pardon us if we thinke formes no more then persons are to last here alwaies; or that the changes which have been, and still are to be of both, must never be done but according to the customary formalities of a quiet people, but rather according to the extreame necessity of a State. For if he aske me, what it is that forms in-organizd people into a Government, of what sort soever? I answer, Necessity. If, what makes or takes away a Law in a Government established? I answer, Necessity. If, what takes away a Government it selfe? I answer, according to himselfe, page 2. that which first gave it being, viz. Necessity. Of which there are severall degrees; for in a peaceable State a word may take away that which in a disturbd State must be taken away by the Sword: after which it is but equall that he who gives the last blow, should in that quarrell give the last word, and leave us to a peremptory obedience, unlesse we would have no quarter in the world, or be like the old *servati in bello*, who were sold, confind to chains all their lives, or condemnd to dig perpetually in Mines; All which it seems this Authour would have the conclusion of this argument, or else we are more beholding to the charity of enemies, then to his. If we will
not

This present Parliament is effectually a Parliament.

Vid p. 18.

Necessity above formes of Government.

The difference
betwixt con-
quest & victory

Vid. p. 33.

not be perswaded by the States arguments, yet let us hear what *Grotius*, among others, determined long agoe, for all the world in this case. If a King have but part of a *supream* power (which consists in making and taking away Lawes, in laying *univerfall Taxes*) and the People or Senate have the other, the King may be forcibly opposed if he invade that part which is not his, because for so much he hath no right nor power. This is to hold, although such a King have the *Militia* alone; for that (in his hand) relates onely to *forraigne warre*, it being unconceivable how they who share in *supream Rights*, can be exempt from a right of defending them. When war shall happen betwixt such *Fundamentall* and *Supream* parties, the King may loose all his share by the right of War. *Lib. 1. c. 4. § 13. de Jubel. & pa.*] Which Right of Warre betwixt those who divide a whole Kingdome, if it end clearly to the Reduction of one party, is not called so properly conquest as victory. This Authour uses the name of the first onely for the hatred every one bears to it, because it swallows the rights and persons of the whole; Whereas victory relates onely to a part of either, as beginning and ending in *Civill Warres*, where disputes of Right arise betwixt those of the same Jurisdiction and Country, and of the same Common Law.

But we have Arguments more Authentique then these, to shew that such changes may be according to the mind of God; and the Demurrer all his life will never prove the contrary, *Dan. 4. 31, 32.* Gods power is an everlasting power, and his Kingdome is from heneracion to generation; All the inhabitants of the earth are reputed as nothing, and according to his will he worketh in the army of Heaven, and in the inhabitants of the earth, and none can stay his hand, nor say unto him what dost thou? That is, God as *Univerfall Lord*, and King of Kings, governes both Angels, men, and Divels, and all must submit to him, because of his *supream irresistibility*. *Psalms. 75. 7.* God is the Judge, he maketh low, and he maketh high. It must be confest that by him Princes raigne; but our Authour had rather

rather perpetually Imbroile our bodies and soules, then clearly say, by whom it is that Princes cease to reign. For then this Controversie would easily be reconcill'd, and we as easily one to another.

Wee have shewen how the reason of Constituting, and of Object. changing Governments, is still one and the same, viz. Supream Necessity : But the Demurrer objects that our change hath not beene done by the same order of persons, who were in the old, viz. By major part of Lords, and major part of the Commons.

Although he is againe besides the state of the Que- *Answer.* stion, shewing onely how they who are the Supream Power of the Land, ought not to command us, rather then that we may not obey them in lawfull things; yet I shall here make another sort of reply, which will be very short to those who profess themselves *Presbyterians*, that is, originally *Parliamentarians*.

Kingdoms which are Supream in themselves, and communicate not in one anothers Lawes, are all of them *Jure Gentium*, in a state of War, unless they be mutually bound by Leagues to the contrary; which Leagues if they come to be broken, usually have the conditions of Invasion annexed, and the time and places nominated for beginning it; and because there is nothing any longer due by Law, or League from the party injured, where now the Sword is onely to end the Controversie, therefore what ever shall be acquired in this state of things from the party injuring, rightly changes all Titles in *Jure publico*, and in the right of governing what is acquired; but in one and the same Kingdome, where the Supremacie of Power and Right lies divided (as *Grotius* *Of the Right of War be-* *twixt Funda-* *mentall Par-* *ties.* *page 7.* states it) there, if they differ fundamentally, denying one anothers Rights and Powers, they are then immediately in the same state of War with those other separate Kingdoms; here onely is the difference, that these in their Concurrence and Constitution, making but one, have none of those ordinary Cautions, as Leagues have

have for their Right of invading one another by the way of war : a circumstance no more necessary betwixt them, then that in the marriage of two persons, a Lawyer should come after the Minister hath conjoyn'd them, and tell them in what cases they may again proceed to Divorce, and after their Divorce, what kinde of marriages they should make next. Even so war is suppos'd in that case, as well as Divorce in this; But because War begins there where Law ends, and reciprocally, and hath nothing but necessity for its equity, and that all the degrees of necessity cannot at first be foreseen, nor where security may at the end of all be presum'd off, therefore there neither is, nor ever was any fixt rule in any Countrey, what people should be bound to do at the end of a VVar. I hope the *Presbyterians* neither of *England*, nor *Scotland* intend to deny what all the world knowes, that they concluded the King under the necessity of VVar, as well as others who conjoyned with them, and having stated his case there, they of the Kirke long agoe frankly declared, that he not satisfying for the blood of three Kingdoms, was not to touch the Scepter any more, but as Mr. Hinderson applied in his Newcastle Conference the 4th. of Hester 14. That if his Majesty reforme not according to their way, he and no lesse then his Fathers House were to perish : by which what could bee and they understand lesse, then change of Government? a thing, why now so horrid for the other party to think on, seeing they gave first intimation of it? They joyntly declared, that the King was not to judge any thing for himselfe, nor upon what tearms his readmittance to simple liberty could stand with their security; * for, his VVar when it ended (as they said who imprisoned him) continued the same necessity upon them, which made them take Armes at the beginning. Therefore they themselves concluded, that nothing could be changed in the Kings concernment, according to the old forme and constitution of the Kingdom, which relates to a time of Peace, and not to a time of War. But

But the Nobility whom he here styles, illustrior pars populi, concurred not to this change; therefore it is formally and fundamentally unlawfull.

In the first place, I understand not, and I beleeve the Lords doe as little, what he meanes by putting them into such improper Latine. For they alwaies understand themselves to be rather of the two *Comites Regis*, then *partem populi*; and therefore as if they were an integrant part of the Kingdome, form'd to themselves a separated House, a Jurisdiction over the people, & lay as a Barre betwixt the King and them; whether that power of theirs had any congruity with the other supream and Legislative rights of the people or no, is not now the question, but rather this, *Whether according to their mutuall engagements, their rights of a separated house were rightly lost to the House of Commons, or no?*

Of the House
of Lords.

This is by them affirmed, and the state of Venice as profound Platonists deny the other; for otherwise Noble men would be as difficultly reformed as Kings, and therefore they rarely conferre illustrious Titles of Nobility on any but those who are in illustrious Offices, things separable from persons, by which meanes all Offices with them are questionable: But to return, that which according to themselves thus excluded the King, by the same Logicke excluded the Lords; and if they either directly or indirectly concurred to the ruine of the rest of the kingdome, then the argument runs strong, that the House of Commons were bound to preserve it, and that the rest rightly owe their whole protection under God to them. But because I will suppose nothing here, the argument of matter of fact must judge one as well as the other.

Wherefore if any will aske whether there was not a Warre undertaken last yeare very eminently dangerous to the whole Parliament and their Party; the Army, and Country Committees, and that by the contrivance of the Royall Party here, the Scots Nation in the North, Ormond in Ireland, it will be past denying; Likewise whether the Hon^r of

Lords in that extremity declared with the Commons that the Scots were Enemies to the Kingdome, or upon the first or second request gave their Concurrence for Counties to arme themselves for their defence; The voyce of all parties must needs say no: So that, that House undertook to act a part as dangerous to the rest of the Parliament, as they did, who were actually in Armes against their party every where. And how then should they expect to be still necessary to them, and to their securities, who had put them into such apparent extremity and necessities? As for the exclusion of some Members of the house of Commons, I hope the sincere Presbyterians wonder not at that act, because the Kirk and State of Scotland was preserved by such an act last year, and by the concurrence of the same meanes which did this here. Yea though they who from thence invaded our Nation, declared as much for the Covenant and Presbytery as the Kirke it selfe, save only that the Kirke had the good luck to speake the last word.

Of Secluded
Members.

They who sit at top in the State are *tanquam in nubibus*, to the eyes of us of the People. Wee know not how they manage their Counsels, nor contrive their transactions, that is best determined by and amongst themselves. It is enough for us if they be of a number competent to act; and be persons who enter by vertue of free Election, and sit in the legall place. For in a case where five are chosen to a business, and that any three of them are to be of the *Quorum*, though two of them be never so accidentally or violently detained, yet what the other three doe is to all intents and purposes valid, which is the present case.

The negative
when preva-
lent in equal
partnership.

By this Gentlemans favour, we have an Axiome of Law, which saith that in Partner-ship or Society (as the Civill Law calls it) when matter of *extreme prejudice* is agitated betwixt those who are of equall contribution either of Art or Mony, then *Potior est conditio negantis*: nothing ought in this case to be concluded against the negatives, though fewer in number, which was the Parliaments case when after the equall provocations
of

of a Prince by Warre and imprisonment some of the same House thought he might have been securely readmitted into the Government again, and others thought it evidently dangerous. In this case the difference was as it were legall betwixt the Members, but not to be decided any way but by force, there being no other Tribunall to judge them, and their house might not judge of it, because there they were parties and judges, a thing allowed no where; and if otherwise, then the major part might legally vote the other out of the house at pleasure. But what was at last determined by any number above forty with the speaker in the legal place, seemes not out of form to us of the people; which was the case of the House of Lords when most of them & many of the Commons at the beginning of the first War, fled to the King under pretence of force from *Westm.* Yea when the five members were forc't from sitting, yet the rest of the House sat and acted without them, and voted a Committee, *Jan. 5.* To sit in *London*, and there to take into consideration the breach of Priviledges, the safety of the King and Kingdome; and preservation of Ireland, which was accordingly done by vertue of those Votes, made when Members were thus forc't away. All our scruples therefore are concerning things to us practicably lawfull or unlawfull in themselves,

As for the *will of the Major part of the people*, how will the Demurrer prove that they had not rather obey this present Power, then seeke to be rid of it by the hazards and calamities of another War.? They usually looke after nothing but their Rents, Markets, and reasonable subsistances, they are the luxurious and ambitious part onely which pretends to new troubles. The peoples question thereof is not *how* the change was made, but *an sit* whether it be so changed or noe? For if according to its formality that be not rightly done; it concerneth not their consciences no more then the Thunder or lightning over their heads doth, which are things totally out of their power, much lesse may they lawfully desolate Neighbours for them.

whicher the transactions of the legall number of the house be invaled, when any members are forc't away?

Of the present consent of the Major part of the People.

Ob.

But he hath found one firme Axiome, That when part of any thing is cut off, the whole quatale is destroyed *quia dum cessat forma, cessat formatum*; ergo the late force on the Parliament hath made this no Parliament.

Answ.

I wish he had taken the paines to give either a distinction or an instance in his Axiome, or have drawn up his inference into a Syllogisme; for I feare we shall finde wide impertinence in the first, and a grosse *non sequitur*, in the last as he hath ordered it. The question disputed here is not whether the denominated Parliament now sitting at Westminster be a Parliament according to the old forme and compoſure of Parliament or no, but whether the Parliament now sitting at Westminster, be the supreme power of the Kingdome or no, and to be obeyed in lawfull things. His Argument runs thus;

The supreme power of the Kingdome consists in a Parliament of King, Lords and Commons.

But at Westminster there is not a Parliament consisting of King, Lords and Commons.

Ergo at Westminster, there is no true Parliament at all *nam dum cessat forma, cessat formatum*.

I thought he had been so good a Logician, as to have understood that the conclusion of his Syllogisme ought to have been contradictory to the question, from which it is as distant as if he would have concluded that two and three make five, which is very true, but how is it any thing to the purpose?

Whither the present power be the suprem?

However I will doe him the favour to deny his Major- For we speake of powers which now are, and he himselfe hath all along condoned the election of the King, and of house of Lords, as things which are not. *Sed non entium nulla sunt affectiones*; & so consequently they who are now nothing, make nothing now at Westminster, or any where else. But doth it follow however, that there can not be now any supreme power at Westminster? at all If he had proved this, he had proved something. But perhaps the very word *Parliament* poses him, or else he would thereby impose

impose on others. I must confesse words are dangerous, when they are not fully explained: and possibly the King mistook himselfe very much upon the very Alphabet and word of his Title, supposing he could not be named King, unlesse he were absolute, as he observed other Kings were; whereas by our constitution he was but one of three, who concurred to the making and abrogating a Law, and it belong'd to the Commons alone, to lay an universall tax; so that he was in most things rather Prince by office, then King by power, *in tanto, non in toto*. Even so the word *Parliament*, as it hath been popularly understood, signifies the assembly of severall houses, deliberating and concluding what was judged for the good of the publique.

But it is a contradiction to say a Parliament cannot at all be truly so called, unles so understood; we know there are eight Parliaments in France, which are not of such a constitution, though of the same Denomination. And if severall persons plenipotentiarily deputed to conclude for the publique good of the people, sit now at *Westminster*; and that the other concurrent powers be civilly dead; why may not we congruously enough still call them a Parliament? His axiome therefore serves onely against himselfe, and the true English of *dum cessat forma cessat substantia*; is this, That seeing the old forme of this state, as it was in the supremacy of Kings Lords and Commons; hath in that relation ceased to be, and is civilly dead, not being able any longer to act any thing; and that a civil body as well a naturall, cannot live without a head one day; it followes then by this position, that the Regall Government is gone, and that we are in the state of a Republicke; no other power now informing or actuating us, besides that which pretends to such a state; and where I pray you is that to be found now, but at *Westminster*.

In the next place he offers a case, If the King, when hee came to accuse the five Members, had detained all
but

Object.

but forty and the Speaker; and had forc't them to Vote, that the whole Legislative power resided in himselfe; would we have deemed this a valid Vote? Especially seeing some Votes since this Session were adjudged Null, because the House was under a force. By which it seemes (quoth he) that *with some non veritas non est perpetua; and Duo dum faciunt idem, non est idem.*

Ans.

The case of the Kings coming to the house of Commons not parallel.

To the first I answer positively, That such a Vote attained by the King, had beene no wayes duely valid. But what is this to the purpose? For the question should have beene *after the King had detained such a Vote, and had got us all into his full possession, whether we of the people might have obey'd him ever after in lawfull things.*

Secondly, if he would have the people understand this case to be paralell, to the late exclusion of the Members, he prevaricates grossly againe; For he supposes the very forty *in the House*, with the King, to have been under a force; whereas in the Parliaments late case, none but those *who were out of the House*, were under restraint; the former were supposed to be forc't to a particular Vote, the latter were kept from Voting at all: Besides they who *de facto* Voted in the House, have publicquely declared that they past their Votes, with all wonted freedome, and were rescued as it were from an overawing power, which concludes against his Argument abundantly. As in this Argument he hath done truth little service; so he hath (by his mistake) done Kingly Government lesse. For if Princes who have us in their full possession, may be obey'd in no lawful things, after they acquire an addition of some other powers unlawfull; then he would dissolve most of their Governments, and have absolvd us from Allegiance to King Charles long before this Parliament began; by which sort of arguing the Royallists I see will have no great prise this Gentleman.

But the Parliament hath already declared the Votes made under a force are null; This Vote I suppose he meanes past, after

after Boyes and apprentices of the Towne, had entred the House, and made the Speaker propound, and the Members Vote what they pleas'd. Here indeed there were forced Votes; But surely this proves not, that they who Voted, when the Members were last excluded, Voted in that manner. Besides the Parliament which knowes better then we of the people, what their owne disorders within their House are, are only fit to Vote, what Votes have beene forc't upon them, and they since that time have declared, they never transacted things with greater freedom and lesse overawing. From whence I easily see that his Axiomes will serve him nothing at all. For we acknowledge *Veritatem esse perpetuam*; if we speake of naturall and Mathematicall truths, where there is no *medium proportionis*, to varie the thing; as, all number are even or odd; because there is no middle number, so all lines are either crooked or straight: But morall & civil things are alwaies in change, because humane actions are invested with such an infinity of circumstances and accidents; for which reason *Duo dum faciunt idem non est idem*; For no two men in the world can act the same thing in all the same circumstances: Thus we heare that *Constitio despectio in jure est periculosa*; and *summum jus aliquando sit summa injuria*, which cannot be but in regard of those various accidents which perplex our actions, and make them like that famous flower the Marvell of Peru, which changes the colour of it's Leaves every day. His last axiome, *That no man ought to take advantage of his owne wrongfull act or of anothers*: is impertinent. and no way belonging to us of the people. If he intends it to the present Governours, he had best to take heed againe, that he determine not against severall lines of our Kings: For the clearing of whose titles after usurpations, the Judges were anciently fore put to it, to make this one Axiome for all. That the imposition of the Crowne takes away all defects, and stops in blood. And if this be true, then we and our forefathers for the most part, have liv'd under no
C
better

The case of the apprentices entering and forcing the house not parallel.

The Parl. votes against force, still observed & are the same still.

Why actions of Government must change.

How wrong hath been fixt for a title.

Bac. H. 7.

better Titles then *Plenary possession*, to which they submitted, either because they knew no better Titles, or could have none of better to command them, or because they were resolved they might lawfully submit in lawfull things, which therefore as it now seemes, is not so much our present question as our present passion.

Two principall inconveniences hee findes in this present Government, and by the goodnesse of the fruit hee hopes hee may judge of the Tree. where I must againe admonish him, that the civill fruit of a Government is alike in all Governments, especially as to the *Meum and Tuum* of a people besides, if the tree and the fruits here were alike, then a good Axiome were spol'd; *Malus homo potest esse bonus civis, & bonus magistratus*, A man bad to himselfe, may be a good Magistrate and a good Commonwealths man. His first inconvenience is,

Ob.

That wee have now made the basis of the State, a quick-sand; and it stands like Nebuchadnezzars Image, upon a mixt footing, part iron, part clay.

I answer, that it stands not now on so mixt a footing as before; For the concurrence of King, Lords, and Commons, for the product of a supream act, was a mixture of things very heterogeneous, to enter into one and the same composition: By reason whereof, supremacy confin'd as it were on a Battable ground; and if we will believe *Perfidents*, King sometimes gain'd upon the other two, sometimes the Lords topt both, and now all is more united then ever in the sole sufferage of the people.

Object.

Toleration is the next inconvenience, it being but equitable, That if wee thinke it lawfull to force people to submit to the Orders of the State, the same people be compel'd to adhere to an establisht confession of faith in Religion. For it is presum'd that Obedience is fully as due to God as to man.

Of toleration.

I answer, the Christian Religion is not tolerated amongst us, it is enjoyn'd, as much as one man can passe it upon another; For, the small penalty of neglecting it
here

here is not to be required of us mutually in this life.

Secondly, The confessions of faith, which he would have men forc't too, are (as I conceive he meanes) but logicall deductions out of Scripture, Ergo not indubitably, true enough to be by force obtruded on mens faiths; *It is not enough to say here, that they who compile them verily believe them true, and intend not to deceive,* which is all that can be said. For then they doe no more but quote themselves, and we are taught that it is a Popish opinion to beleieve any company of men are infallible, in what they purpose: wherefore the Magistrate can doe no more safely, then recommend not force, their notions and Logick on the people. But in a case of *meum* and *tuum*, or in a morall thing he may be more peremptory then in a divine, because those things are certainly knowne to us as men, then what is of divine revelation and inference.

He feares that by an obedience to an unlawfull power, he may assert its unlawfulness; and should our servants rise against us, and command us by threats to performe a lawfull Act, which is but transient we might yeild to avoid their force: But if they should affirme that the Government of the family were theirs by right, and that they intended to perpetuate it over us; we should thinke it a great sinne to betray that place and power wherein God hath naturally and morally placed us.

Ob.

Ans.

This indeed is a very fine subtilty to end in nothing: and I am sure what ever the basis of the State be, the Basis of his Argument is put on a quick-sand. For if he intend truth thereby, he should have proved this mainething; That the former Magistrate was our naturall parent, and that we all derive from him, as from a *Genarcha*, which being so evidently false, is as ill supposed. For in this confusion of Families in the world, in which the originall Families are lost; we owe no naturall duty to any, but to those from whose blood we derive.

Secondly, Though it were true, that the chiefe Magistrate were our naturall Parent, yet it followes not, but

The magistrate
in a state, not as
a Father of a
Family.

there may be a case wherein he might be restrained from Government; the law supposes many, which is sufficient to oppose this Gentlemans single judgement; And if he be indeed a Presbyterian, he hath already concluded as much in the last Kings case, by concurring to invest his person with the accidents of Warre, in detayning him prisoner at *Holmby*, and *Newcastle &c.*

Thirdly, I understand not what he meanes by *Gods placing a Magistrate morally over us*. For God he is our Divine and supream Magistrate; our Parent is our naturall and domestick Magistrate, and those who command the State wherein we are, are our civill publique subordinate Magistrates under God; and every particular man who is arrived to the maturity of reason, is, (if any such be) his owne morall or private Magistrate. For the principle of a humane or morall action, is a minde acting freely according to vertue, and those lawes which are written within us. But if by a morall Magistrate, he meanes such a one only, as is seated over us, and hath a care that we live conformably to vertue, and honesty in relation to others; then it followes, that whoever hath the capacity so to hold inspection over us, is a sufficient Magistrate; but that can onely be he under whose full possession we actually are. Moreover he is to know againe, that States cannot looke so strictly after vertue, as after publique quiet. For morall vertue is a private thing, and by reason of the free concurrence of the will, cannot be discovered certainly, but by those who are able to look within a man: But that which is *ad alterum*, and concernes rather wrong, then right, belongs to the Politicall Magistrate, as a thing which cannot without confusion have redresse otherwayes. For the chiefe convenience of a State, is, that people might be kept from inconvenience, or incommoding one another; and that they may be conserv'd in a liberty to doe other good things according to Piety and honesty: So that he who doth things in themselves good, though under an unlawfull civil

Why states
cannot looke
so strictly after
vertue, as after
publique quiet

civill Magistrate, doth not by those acts assert any Magistrates right; but his only who originally gave Law and Rules for those internall acts, and that is Gods right alone.

Lastly, whereas in this argument, *he saith a Father of a family so abused should in his required submission, sin, if he betrayd his place and power which God had naturally given him.* I answer that there is a difference betwixt betraying a place so given, and loosing it by force (which indeed is his first supposition) The one cannot be done without sin, because it is done voluntarily and totally by himselfe, but it is not our sin if we be forc't out of a place; to which we are compelled by a principle without us, and totally besides our power.

Ob.

Ans.

But there is a lawfuller power visible enough to religious eyes, though for the present in an Eclipse, and suspended. It is not lawfull for a man to marry another woman whilst his owne wife is in a sound, or for a woman to marry another man, whilst her husband is in captivity or restraint, and willing to come to her if he might.

Ob.

Ans.

To this I answer; First, How knowes he certainly that the other power is onely in an eclipse or suspended? or if it be onely in an Eclipse, doth it follow that we of the People might not doe lawfull Actions by the suppliment of other lights, whilst we cannot have that of the Sun? Must we all that while cease to be men for the absence of that which we cannot help? The Presbyterian party would not have that understood so; when the King was in prison at *Holmby*. There be no more suns in the world but one, but there are many Magistrates, and such who give better light one then the other, for which reason God first chose not Monarchy for the Jewes, certainly in an Eclipse, the Sun is never out of his naturall Orbe, though his light and influence maybe suspended and intercepted from us, but when a Prince is in a forraigne Country, and lives under the Lawes of another Magistracy, and that all Lawes and distributi-

Of the Eclipse
suspension and
extinction of
supream powers.

The union of
people to a
Government
not like a mar-
riage.

ons of Justice and Magistracy in the Country he pretends to, are made without him and against him, will you according to the Lawes of Nature, Nations, or Policy, say he alone, and in that condition, is the supream power or Authority of that Country, or rather that we of the People do nothing but sinne in his absence, though we do things in themselves lawfull? If you will aske how he came to be out of his Orbe or Country,? I am sure it was against the advice either of Presbyterian or Independent. It is easily granted, *That a man may not marry another woman, so soone as his wife falls into a swoond.* But you must againe be reminded that the nature of Marriage and of Government differ extreemly there, where you suppose them most to agree. For Marriage is not alwaies necessary to every particular man. But the publiquebody of a people cannot be without Government one day, no more then a man can be without a Head, because a small time serves to the ruine of a man. Secondly, to take this or that woman to wife, is a thing of free choice; but it is not so alwaies with the People in relation to Kings, who have many of them committed great Rapes upon them, as I beleieve this Gentleman will acknowledge.

Obj.

A Woman may not marry another Husband, whilst her first is in Captivity, and willing to come to her if he might.

Ans.

A King of England, why not as a husband to the people of England.

These cases of Marriage still makes a very bad paralll with our present case. For first, we have been taught by all parties in this Warre, that a King of England is not as a Husband to the People of England. For a Husband is he who alone makes and abrogates the Laws of his owne Family, as a right of his propriety, which a King of England could not doe alone in this state. Secondly, where was this Prince ever Crowned by which this Author meanes solemnly married to this state? where was the *benedictio sacra*, the anointing or the Oath of Contract taken by him? I am sure the Covenant hath made no provision for him.

To

To this purpose is that Argument in the grand case of Conscience, [viz.] The Apostle commands Wives to submit to their Husbands, surely quā Husbands, not quā men But should a stranger come to anothers Wife and call himselfe Husband (having before either imprisoned or slaine the rightfull Husband) and require submission, surely though shee might bee forced, yet it were a sinne to submit to him thus as a husband.

Ob.

I answer, to submit in Adultery is a plaine sinne; but for a Woman to submit in lawfull things to the power of a stranger is no sinne, though he please to call himselfe her Husband, or exercise the Government of the Family. There is the same mistake of Husband here, as in the former, so that the Argument built thereupon, of it selfe falls to the ground. But if by this he meanes that in matter of supreme Command, we of the People may not obey any but the Husband or the King, why then did the Presbyterian party for so many years oppose, and not totally submit to their now supposed Husband? Why did they Commissionate so many thousand Men, who by accidents of Warre had the power, though not the chance to kill him? Nay in the Parliaments case it was alwaies conjoynedly argued by them, that it was he the Husband, that would have killed them the supposed Wife, for which reason the Kirke of Scotland long ago sent him a bill of Divorce, unlesse he satisfied for the blood of three Kingdoms. Which of the two parties it was that at last killed him, belongs not much to the satisfaction of us the people, though here questioned because those parties as tot hat act differ'd no more (if he will further argue it) then *diminutio* and *obtruncatio capitis* doe, for they who after a long Warre, and by long imprisonment dispoyl'd him of that regall power (here so much argued for) did according to the terme of the civill Law, *diminuere caput Regis*, and they who in consequence of his civill Death, tooke away his naturall life, did *obtruncare Caput Regis*. If he had been kill'd in an action of Warre before, should the Souldier

Answ.

Of taking away the Kings life.

dier, or he who gave the Souldier commission have answered for his life? As for the submission of a Wife to a stranger as to her Husband, which is indeed a sin, I earnestly pray the Author seriously to consider, whether he can excuse us and all our forefathers from sin, ever since this Kingdome long agoe fell under the power of an usurping King, if this his way of arguing be true?

As for the second Demurrer, I consider he hath given account to another very worthy Pen, which hath left little for my gleaning in such a field; however I shall see what hath escaped his hand, that the world may witnesse at last, that truth hath lovers, as well as error and passion have Champions.

Ob.

This Author and the grand case of Conscience begin with St. Paul Ro. 13. That wee must submit to higher powers, not that wee may lawfully submit, and that not for wrath onely, but for Conscience sake, which is of things necessary, not of things lawfull: Wherefore (say they) it is ill said that we may lawfully submit in lawfull things, obedience as a matter of Conscience being a thing necessary.

Ans.

Of obedience
for wrath, and
for conscience
sake.

Tyrants in ti-
tles from
whom.

I grant it either in lawfull or necessary things, when obedience is required from those who actually have the whole Sepremacy of power in themselves. If I hold this lawfull, and he hold it necessary, we are not contrary; He onely makes what I allow more allowable. But the reason wherefore the *Apostle* requires obedience to such, Not onely for wrath (which is onely in regard of the power which they who are supream have to destroy us) but for Conscience sake is, least by our resisting them we unnecessarily disturbe and draw calamity on others, and likewise in regard of their Authority from God, Tyrants even in title not arriving to the great Dominions of the Earth, without Gods secret order, God having clearly stated the Government of the world for ever in himselfe as his cheife Prerogative, he not being known or feared any way so much as by Dominion,

minion, which made St. *Augus.* in *C. Dei.* rightly say, *Potestates omnes sunt a Deo, non omnes voluntates*, so that the reason wherefore God permits sometimes such Princes to attaine to these powers, is the same wherefore he permits Devils in his Government of the world, a *Nimrod*, or a *Pharaoh*, a *Cesar*, or a *Herod*, an *Antichrist* or a *Turke*, who as bad, and as usurping as they are, and seeme to us in exercising so severe, though so secret a part of Gods Justice, yet fulfill severall prophecies, which shewes they come not to what they are, meere by humane contrivance by chance or accident.

The grand case of Conscience. P. 3. distinguisheth betwixt Authority or Power, and Rulers deputed to the exercise of that Authority. The first is by Gods positive Ordinance, the other but by his permission.

Here he grants enough as to our case, which is of obedience, for if he can assure me that it is consonant to Gods permissive will that such persons be my Magistrates, I am well satisfied then, that Gods will is, I must be their Subject, Gods free admission of one being the necessary exclusion of all the rest, so that subjection is not a thing now of my choice, but of my necessity.

But the Demurrer, P. 3. would know what difference there is in popular obedience to lawfull powers, and unlawfull powers, if obedience be necessary to both.

Ob.

Ans.

I answer, If the powers here supposed by him agree equally in their supremacy, and absolutenesse, and differ onely as one is got lawfully, the other unlawfully, then the difference of our obedience to either, is onely in the difference of things commanded, as they are either lawfull or unlawfull; neither can the Author (now arguing so much for a lawfull power) conscientiously tell us, that the lawfulness of the civill power commanding can make our obedience necessary to an unlawfull thing commanded; but rather that it makes that power then become to us in some manner unlawfull, and worse to us of the People, then if we were under

Of our lawfull submission to a Magistrate who rules by Gods permissive will

Obedience necessary to lawfull and unlawfull powers how different.

How we may
have a right to
take what ano-
ther may not
have a right to
give.

The difference
betwixt privat
Title and pub-
lique.

Of possession.

der the absolute command of an unlawfull power which exacts nothing but lawfull things. The knot of this point lies here, *Whither a civill circumstance* (such as is the Magistrate either lawfull or unlawfull) *can vitiate an Act of morall duty?* I believe his distinction P. 2. of a *Government constituted or constituting*, serves nothing for the discovery of a supream lawfull power in it selfe. For I hold that whatever was once a sin may alwaies be called a sin, though with rooting or without rooting. Not but that God and we may make good use of other mens bad actions if they be such, for which reason poore beggers may in their extremities receive necessary Almes from those who came to their estates by wrong and oppression; by the receipt whereof they do not justify the Title of such Estates, much lesse doe wee justify the unlawfull Title of a supream Magistrate, from whose care we receive necessary protection. I say *much lesse*, because cases of Estates are *juris privati* and have Courts to judge of them, but the other is so much *juris publici*, that there is no mortall Court to judge of it, for which reason how will these Authors (what Governours soever they desire) evidently prove that they originally had lawfull Titles, or that they at first did not forcibly take the people to themselves, but that the people voluntarily resigned themselves to them which was not in *Nimrods Case*. From whence this may be inferd to the satisfaction of the grand case of Conscience, p. 3. That if he had that desired Governour, yet according to himselfe he would not owne him long, because he were not sure to have in him a supream power, such as the Apostle, Ro. 13. in his sence understands necessary for the Kingdome of England. But in our sence of plenary possession, which was the case of the Apostles time, we can easily see first, how our present power is the higher (the whole Kingdome now receiving all law protection and subordinate Magistracy, from them) and how they may be in lawfull things obeyed according to the same

Same Apostle; and to the duty of our Creation and being in this world.

The case of conscience p. 3. acknowledgeth that a Government may be altered; but it must be done still by the higher powers, whom we ought equally to obey in submitting to an altered, as to a continued forme: But it is a sinne if a party forcibly lay the higher powers low, and exact obedience as to the legall authority.

I thought that he who in his sence understood the Covenant *inter terminis* Externall, would not have allowed a change of Government here; no more then he might allow the Scots (though upon never so much reason to themselves) to change their Doctrine or discipline; because we swore during all our lives, to preserve that which was established among them, at the time of our swearing. But I now see we may well distinguish betwixt the Covenant it selfe, and some Covenanters, the Covenant being as open for one change, as for the other.

Secondly, If a Government though never so reasonably reformed or altered, be never in any lawfull things to be obeyed, (termes which he did ill to leave out of his Argument) unlesse by the concurrence of all the higher powers; then farewell all the old consequences of *Solus populi supremus lex*, and the Presbyterians former Armes are unjustifiable. How corrupt and Tyrannicall are most of the Governments of the world, and yet how many of those supream powers hath he observed to reforme themselves? or diminish any thing in themselves, to alter for the better? although the taking away of something in a Government, may be as necessary, as continuing any old or new thing in it. Certainly these Authors have read but few of *Jonases*, who voluntarily renounce themselves to settle a Tempest.

Thirdly, Our Alteration was made by the present supream power of the people: and the reason wherefore both Houses laid the exercise of Regall power aside for

some yeares, made the Commons as they have agrüed it, lay it aside for altogether. *viz. Salus populi suprema lex;* The laying of it aside for some yeares is argument enough to us of the people; that it might be laid aside for more yeares, and that one King might be laid aside as well as another. For to us it seemes effectually all one, *Non esse & non operari*, for a thing not to be at all, and in this world to doe nothing at all. If they sinned who did this, is that any thing to any but themselves? It is an Axiome of good Law *Noxa sequitur caput*. Thus whilst his Argument should have been against our lawfull obedience, it is against their exacting it, as to the legall authority, which yet is grossly false; for they exact it not as to the old legall authority, but as to the present supream power of the people, *Non nomine Regis, sed nomine populi*. And yet in one good sence it may be still called the same legall Authority, because we have still under it the same lawes for our properties as before, and continued in life by them, as our lives themselves are.

Ob.

Case of Conf. p. 3. it is objected that this principle of obeying those onely who are in plenary possession of all supream power, is fit onely to destroy States: for then should none Govern any longer then their swords and strengths could beare them up.

Ans.

I conceive (according to what is already proved) that nothing can be found, either more consonant to Christian charity, or to the preservation of States, then this our principle of obedience; besides he knowes no Kingdome in the world, where people doe not obey upon this same plenary possession; Allegiance alwayes relating to protection. And if according to his consequence, we should suspend all obedience till we have infallibly found out that Per on who derives a knowne and an undubitable right from him who was the first in compact (because according to these Authors intermediate intrusions, are violations of rights, and may not be obeyed even in things lawfull) then I pray you of what can we resolve lesse, then certainly to extirpate one another? which will

Demur p. 8.

Of non obedience.

will come to passe ere we finde what we search for in such a blind scuffle; and for feare of doing a lawfull thing under the inspection of one, who is suppos'd to have done another thing unlawfully, must we resolve of doing all unlawfull things by warre our selves, and desert unnecessarily, the cares of Wife and Children, of Church and Neighbour? For non-obedience in a State is but a *Chimera*; neutrality, a State without relation; there is no subsistence for it in any State, and unlesse you will allow me to concurre with others, and under others in lawfull things, I must leave the world; my subsistence being onely in a conjunction with others here in this jurisdiction.

The two Demurrers p. 3. & p. 7. Except against this our present obedience, because the present powers is yet new: neither is there a totall cessation of all hopes of recovery.

Ob.

Philosophers hold that the Definition of a man belongs to an infant, as well as to one of many yeares. Because after the Organization of the parts, he is informed with the same principle of life and reason, as a growne man is; and having the same forme, is the same thing. Even so the present power hath possesst all the parts of this Kingdom, gives them life in the administration of publique justice and protection, which are the soule of a State, and the power which preceded this, what did it infuse more vitall then this? And now that that is taken away, if this other did not presently enter into its place; the Commonwealth were dead, and each man were left in his naturals, to subsist of himselfe, and to cast how hee could in such a state of warre, defend himselfe from all the rest of the world, every man in this State having an equall right to every thing.

Ans.

What time
makes a form'd
Government.

Wherefore let every man, especially, they who would informe consciences, take heed of affecting popular revenge, vvhich must also reach themselves at last: for vvhen they have once frighted people from lawfull actions, vvhat can they then commit but the un'ayvfull?

Into what an unhappy transport are we fallen, that such a principle should be derived from our Church, the very Papists being ever ready to obey in things lawfull, though the State seemed to them unlawfull. These will judge better of the State now then of the Church, the one inviting and incouraging us to lawfull things, the other deterring us from them. But to return to the Argument; I have already shewed, that new or old powers, never can signifie good or bad powers. The uncertaine hopes of recovering in the future, proves that the thing is certainly lost for the present, and it is our obedience at this time which this Question relates to. However the King of Portugals acquisition, or Uirpation was presently acknowledged by our King and others, although the King of Spaine then had and still hath great hopes of recovering it, he being alwaies *Hannibal ad portas*, and never removing out of his own Dominion into another Forreigne Magistracy.

Obj.

The first Demurrer p. 7. conceives our present condition like that of Israel, betwixt David and Absalom, at which time (quoth he) the people had grievously sinned, had they rendered obedience to Absaloms commands and substitutes, so long as David was living.

Ans.

Our condition
different from
Israels betwixt
David and Ab-
salom.

This is very true, but farre from the purpose. For *Absalom* was not a fundamentall legislative party in the state of *Israel*, as the House of Commons lately was, and so could not pretend such a right of Warre. Secondly *David* had his Army hard by in the same Kingdome with *Absalom*. We have none here but the Parliaments, all the Kings forces and adherents being dissipated. Thirdly the *Israelites* scruples are supposed during the time of Warre in *Israel*, ours after the War is ended. But if he mean by this fallacious paralell, that the *Israelites* ought not to have opposed *David* at all in the way of Warre, then how will he value the scruples of his own breast, who promoted the course of War as well as others against the King?

The Author of the grand case of Conscience is very ingenuous

generous in his contest with his adversary to forme a Syllogisme with foure terms, and then be able to finde them out, and to answer the fallacy: so that whilst he wrassles thus stoutly with himself, he can have but a faire fall in his own shaddow, to prevent which I shall take the pains to part them both. His Syllogisme (as he imputes it to his Adversary) is p. 4. 5.

If the people of the Roman Empire did submit to the power of Claudius and Nero, who by force were put upon them, then the people of England may lawfully submit to a change of Government though beleev'd unlawful.

But they did submit, Ergo these of England may.

Here he excepts against the equality of interence made betwixt those whose persons were without due Title forc't upon people, but still in the same Government; and those persons who without right of Title force themselves upon us now in another Government.

But what if the Syllogisme be indeed and virtually onely this?

If the people of the Roman Empire were required by the Apostle to continue obedience to Claudius and Nero, then the people of England may lawfully continue obedience to their present Governours.

But those might, Ergo these may.

His distinction of persons intruding wrongfully into the same Government, and into a different Government according to his former position satisfies not conscience in either, because both are supposed unlawfull and differ only *secundum in ius & minus que non var'ant speciem* so that if obedience were not a sin in one, it is not a sin in the other. If he say, obedience to intruders into the same Government is not a sin, then he hath dispatcht all controversy concerning the exclusion of the Kings Line, and that the Parliaments fault as to him was that they rather changed the Governement then the Governours, which he acknowledgeth more plainly P. 5. Where speaking concerning the persons coming to power, he saith it is not materiall

Obedience to false Governours in the right or wrong Government varies not the sin of obedience.

Wherein Cæ-
sars case & the
Parl. disagree

materiall who puts them in, nor what men are put into powers ordained by God. But to come nearer to the point, he cannot say that of the usurping Cæsars, which may be said of the Parliament. For these are the representers of the people of England, and were lawfully a third part of the supream power before the change of Government. Cæsar had no part of supream right, but what he rather usurped then acquired by any diction of right, or fundamentall legislative controversie betwixt the Senate and him. To say as the Demurrer, p. 4. That Cæsar had gotten the consent of the Senate, and added compact to his conquest, is absurd, unlesse he meanes he had gotten the Senate so into his power, that he had

Wherein Cæ-
sars case & the
Parl. agree, as
to justifie our
obedience.

them in a condition of Quarter; in which case as the Law saith *principum rogamina sunt mandata*, without doubt if the peoples submission to Cæsar were lawfull upon his changing a Republique into a monarchy, after the Senate had forbad the approach of his Army, and that he had expelled many members from the Senate, why may not a lawfuller obedience be given to those of a Senate it self, who have changed Monarchy into a Republique? These two changes are so farre alike, that they frustrate this Authors distinction of persons intruding unlawfully into the same, and into a different Government.

Obj.

He followes his objection still, p. 5. arguing that though people did de facto, obey such false possessors, and Usurpers, yet that proves not the lawfulnessse of our obedience, nam a facto ad jus non valet consequentia; their submission should have been proved legall.

Ans.

If he hath a quarrell to us for our peaceableness, yet why should he quarrell with St. Paul?

He bad the Romans submit in the same kinde; and unlesse we had Prophets on purpose to tell Governours, as well as us of the People, who must alwaies succeed according to the minde of God, then the state of the world, the nature of politick justice of society and Religion is such that we may & ought to submit in obedience to those who plenarily possesse, protect and command us lawfull things,

things. Surely he did not consider his Axiome well, For *a facto ad jus valet consequentia*, from fact wee inferre many civill rights, as custome and prescription, &c.

Neither is it necessary to prove their submission legall, if it be prov'd absolutely necessary and equitable.

And yet we conceive another case (besides that before mentioned) wherein this submission to a new power may be call'd legall. For the end of all law and Government is to preserve our persons and estates ; and they who are in supremacy of power, have power to preserve or destroy both if they please ; and therefore have as great a power over our lawes, which are lesse, then our lives. So soone as one supream power is expelled by another, law, life, and estate fall all into the hands of the succeeding power ; and what it doth not actually take away, stands in effect as deriving from it ; and if that supream power make a sanction for our obedience to it (as alwaies is immediately done) then we may say *our submission is legall*, or else the supream power cannot make a law.

In what sense the present submission is legall.

To that argument where we assert, that that Authority which excluds all other Authorities must be obey'd, or else all authority falls to the ground ; *The grand case of Conscience* answers obliquely still, *That notwithstanding, such authority can never illegally get the legall power ; nor can it exclude others from their authority.* In which answer he plainly contradicts himself, p. 7. For Cæsars power was (according to himselfe) legall, and yet got by a Circumstance very illegall ; the Senate being empty, and intimidated, and not so much in their own, as in his power.

This argument is so farre from concerning us, that it is directed onely against those Princes who *ab origin*, drive from illegall acquisitions. Of which he will doe well to speake largelyer, when he can assure my conscience by infallible evidence of right, that I may safely sweare or destroy men upon it, that there was ever such

Of the cleare evidence of old rights, so as to satise conscience for actions of war upon them.

a man in England as *William* the Conquerour, or any other ancient King, from whom Titles are said to be derived, either legally or illegally: This is a proposition, which I beleve he in the midst of his peremptorines was not aware off, no more then I now doubt in whose hands the present possession of the Kingdom; is for which reason they assert their Authority, and it is his part to shew how infallibly it appears to be anothers by indubitable right *ab origine*. But because it is argued that in the disquilition of a right Title, none are so blind as the people (who among other burthens have the impolition of other mens judgements cast upon them) therefore an usurped Title to them is true enough to exact obedience.

Ob.

Hence the grand case of *Conf.* answers, p. 10. *That then by the rule of contraries it follows, That when titles are visibly unlawfull, people are disengaged from obedience to them.*

Ans.

To this I reply, that this answer is nothing but a meere repetition of the question, and hath no medium of prooffe annexed to it; the very question being this conclusion, *viz.* Whether obedience be lawfull to Titles visibly unlawfull?

Secondly, It hath been shown, that non-obedience and subsistence in a state are incompatible; every man in a state stands in a Relation, and must either command or obey; and owes something to him, by whose care hee sleeps quietly in his Bed.

Thirdly, If by disengagement from obeying a lawfull Title, he meanes that we may choose whither we will obey or no, then though disengag'd, wee may obey.

These answers helpe us halfe way over the next difficulty.

Object.

Dema. p. 5.

We may not any way affirme the right of the Vsurper, or deny interpretatively the just title of the Heire, without the guilt of treachery, lying and falsenesse, if not of vow-breaking, In suffering a Theife to take my purse, I cannot helpe it; If I must
part

part with that or my life, I chuse to loose my Purse; not for feare
least I breake the fifth or eight Commandement, but least I
breake the sixth, in being guilty of selfe murther; yet rather then
say he hath authority to take it, I must loose my life. In point
of protection among theeves, I may desire some to preserve mee
from others, yet may I not say their robbery is just, or joyne or
ply with them in robbing others.

To say no more of the certaine evidence, and of the
indubitablenesse of ancient originall Titles (which is
here the maine of the Argument) I answer that simple
obedience to an establisht Vsurper, doth not alwaies in-
terpretatively affirme his right, or deny anothers, but af-
firmes rather the irresistibility of the possessors present
power. God is the supream magistrate of al the world, and
by reason of his Omnipotent presence every where, we
cannot exclude him from the cognizance of, or right to
any of our Actions; but our earthly Magistrates may fall
into such circumstances, that they may have neither per-
sonall or virtuall presence with us, and therefore may be
said to be civilly dead, according to the former Axiome,
Idem est non esse & non operari, to doe nothing and be no-
thing is to us the same thing, motion being the chiefe
evidence of life.

Ans.

Obedience
some times af-
firms not a Ti-
tle but power.

In his case of the Thiefe, I desire any man to consider
whether (as he hath put it) he hath not clearely bro-
ken one Commandement, besides those which he hath
named, viz. the third, because it is an untruth to say
the Parliament requires not obedience from any of us,
unlesse we all acknowledge the lawfulnessse of their au-
thority, which is the second false supposition here.

When Officers gather Taxes for the State, they have
no commission to demand our Declarations of the States
authority first, but onely to receive the money Taxed,
which this Author knowes is a truth knowne to every
one. As for the peoples conjoyning and complying with
the State to Robbe another, by obeying to the prejudice
of another; he must meane it in a Robbery either of
the rights

power, or of Riches. For power, the people aime not at it, their condition alwaies is *large* who ever sits at top. And for getting by the warre, I hope the Presbyterian party which had the authorizing of Taxes, as well as others, knowes as well as the people themselves, that this is a grosse prevarication. Last of all there is difference betwixt willing compliance, and necessary subjection, which is the peoples case.

Obj.

He objects againe p. 6. If obedience be necessary then a title once wrong'd can never be lawfully righted, it will be sinne to helpe the weaker party, or to rescue our selves from perpetuall slavery.

Ans.

Here he is started suddainly into two other questions. First, how a Title may be recovered? and secondly, How we of the people may rescue our selves from the slavery of any Titles? These two relate to the future, which is of Gods secret disposing; our question is of the present only.

Of the recovery of dubious Rights, and the benefit which people get by most warres.

But I pray you what doe people get when warres for recoveries of dubious rights are long and calamitous? What are the people of *France* or the people of *Spaine* better for the long and hereditary anger of their two Kings? Or what was the world better for *Alexanders* Conquering it? The Houses which are burnt, and the millions of bodies left dead in the field, are the peoples; and Princes scorning to derive from them, still trample them to dung. We talke of some Titles wronged, as if their rights were so certaine, and so necessary to live under, as God almighties is, who yet disposes of the changes which are made here among his chiefe Officers, and not we; Who is it then that can right wronged Titles, but he alone who makes all Titles right?

Obj.

To that case where it is argued, that if the Masters mate had throwne him over-board, and by power would suffer no other to guide the Ship but himselfe, if the mariners will not obey him commanding aright for the safe guiding of the Ship, the Ship must needs perish and themselves with it; It is answered by the Grand Case of Conf. p. 9 That the case should not have been.

been of a Mate as a partner (which is false) but of a party of the Seamen, who coming to shore should bring the other obeying party to punishment, especially for acknowledging the Vsurping Stearesmans right, which is still falsely suppos'd in our case.

Here I desire this Casuist to pull off his maske and speake plainly, whether he doth not plead for his owne punishment, as one who at the beginning of our warre principally encouraged us not to be guided by the then pretending Stearesman, whom they of his party laid aside, and fear'd a while themselves; the Scots declaring that he was not fit to touch the helme againe, till hee had satisfied, &c.

Answer.

The case of the Master of the Ship thrown over board.

Belides, this is true, that they then required obedience from compounding Royalists, although to them they seemed an unlawfull power and Magistracy, as to the dispensing of publique and private justice.

Secondly, the reason wherefore these marriners might not acknowledge him the right master, (as he hath varied the case) is rather because this is in an inferiour thing *de jure privato*, Master and Marriners being accountants to the Merchants who have a Court of Justice to judge the fact; but what Court is there in this world to call that power, which here is the supreamest to any account?

Thirdly, he supposes the usurper and the compliers to be brought to account by the others, but not till they come to shore; whereas in our case we can do nothing but in the ship, that is in the common-wealth, when we leave that, we go into another world, our true *patria* where indeed we doe not call one another, but are all called together to an account by our supreame Magistrate, whose sentence we would faine prejudice here by a confusion of the ship *in via*.

The grand case of Conscience, p. 9. Adviseth that seeing we are so unsettled, we should use meanes for a settlement, though by its procurement wee were more unsettled: If a man be at the rivers brinke he would advise him to keepe out of the water, but

Ob.

if at once he leap into the middle of the river, he would perswade him to come to the bank, although he wade through much water to come thither.

Answ.

Whether we
be actually in
the unsettlement
& deepes
which he sup-
poses?

When the
whole body
may be hazar-
ded for a dispe-
rare remedy &
when not.

I see according to this horrid tenent, that if God (as the Scotch phrase hath it) comes not to the whole length of our desire, then there must be no peace betwixt man and man in this world. Mr. Ste. Marshall preacht lately, that God was to be thank't for some thing, that Church doores were yet open to those who had a zeale, and a will to congregate, that they were not under their enemies swords, nor compounding with them; Hee saw how they might be worse if God should through their peevishnesse let them see forraigne armies at their doores, who have both faces tongues, religions & affections different from ours; and wil not care for firing our houses and Churches, or for giving us lawes againe in an unknown tongue, and perhaps Religion too. Can he think the Notion of our Church government would be a charme to such swords and consciences? Or rather can he assure us of his prophecy here, that if we begin new troubles, we shall certainly have victory? For his argument supposes it must needs end so, and that by his perswasion *we shall wade to the bank*. If we were indeed in the midst of the water (that is in the midst of warre and confusion) then being engaged for life, we might endeavour to wade through, though the streame were running deepe with our own and Childrens innocent bloods, for after all Metaphors, that is the element which he means. Thus in no diseases but those which are supposed deadly, may we use desperate remedies, such as may endanger the destruction of the whole body; But may a man endanger his whole body, when it is not for the cure of himselfe but of another, and by the killing also of others besides himselfe, wife and children? I will not name what sort of subtilty this Gentleman hath used in this Argument, nor define with what conscience here he seekes to satisfie anothers; For, lest we of the People should

should bogle at comming on the Stage to Act our late Tragedy over againe, hee would impose it on our be-
 leifes, that we are still in the middle act of it and that we
 ought to finish it. It is high time for him to consider
 whither if we run along with him in this we should not
 shut up compassion from our Brethren, and shut out a ^{1 Joh. 3. 17.}
 great part of our gratitude towards God; although I
 confesse some scars and haltings may remaine yet, after
 the warre it selfe is ended. Methinks he should finde every
 thing both in Nature and Christianity more favourable
 for our present Peace, then for our third Warre, espe-
 cially seeing all our former warres have ended very con-
 trary to the expectation of those who were hottest to be-
 gin them. But I consider that passion is the last hold out
 of which we are beaten, of which the fuller men are, the
 lesse do they (through a great judgement on their spi-
 rits) perceive into what deformities they doe trans-
 port them, it being the nature of all intoxications that
 their defects are better perceivd by any, then by those
 who are oppressd by them.

THE



THE
Second Part,
THAT

This obedience to the present Government, is not contrary to, but consistent with our Solemn League and Covenant.

BY these steps we are come at last *ad sacras columnas*, to those sacred Pillars on which the holy Covenant hangs almost in every Church, as a *sanctum eternitati* a law sacred to eternity. The hands which hung it there, have not (they say) power to take it downe againe. Who therefore may undertake to tell these persons, that they actually are or else may be freed from it, seeing they finde themselves obliged if they can, to tie all the world with them in the same sort of knot ?

Here is certainly a zeal worthy to be fixt on that,
which

which should oblige alwayes ; and the world must confesse that there hath been no publique oath taken by any person anywhere ; who have been more scrupulously attent not to double with their God in relation to his part in contract. But yet let not these consciences be scandalized if I say it was compild by none but mortall men, taken onely by such, and as a promissory oath cannot possibly be free from those exceptions, and accidents wherewith time changes the constitution of all those things, which it doth not absolutely destroy, wherfore upon a sober review of al I doubt not, but as many Oaths and Leagues are transient, so to shew that this according to its nature, and as it is originally a League or Covenant, that is, as it is a formall compact, relating to the publique and united corporation of severall Nations and Magistracies (by which each people were united together, and without which neither people were respectively to act any thing separately within and against themselves) I say I doubt not but to shew that such a Covenant, uppon what hath interven'd is expir'd to us the People of England, and that without any default of ours ; And though our Magistrate would give it a new life and obligation; yet to many principall things it can oblige no longer ; and for the next we are to consider that though something of our first end in reformation streame through the Covenant ; yet its spring head rises higher then it ; which end we are in all formes to pursue still, & are now left ty'd to so much of the Covenant onely as we were obliged to for all our dayes withall our mights and soules, before we took it at all. Lastly, if it were granted, that the Covenant is not expired, yet I shall here shew, that our submission to this present government is no way inconsistent with it.

In which few words, though I have stated the maine of its difficulties, yet ere I apply my selfe to answer objections, I shall brietly premise what I have observed others have omitted, it being hard to finde how we may be unti'd

F

from

we are still obliged to many things of the Covenant but not *qua* league or Covenant.



THE
Second Part,
THAT

This obedience to the present Government, is not contrary to, but
consistent with our Solemn League
and Covenant.

BY these steps we are come at last *ad sacras columnas*, to those sacred Pillars on which the holy Covenant hangs almost in every Church, as a *sanctum eternitati* a law sacred to eternity. The hands which hung it there, have not (they say) power to take it downe againe. Who therefore may undertake to tell these persons, that they actually are or else may be freed from it, seeing they finde themselves obliged if they can, to tie all the world with them in the same sort of knot ?

Here is certainly a zeal worthy to be fixt on that,
which

which should oblige alwayes ; and the world must confesse that there hath been no publique oath taken by any person anywhere ; who have been more scrupulously attent not to double with their God in relation to his part in contract. But yet let not these consciences be scandalized if I say it was compild by none but mortall men, taken onely by such, and as a promissory oath cannot possibly be free from those exceptions, and accidents wherewith time changes the constitution of all those things, which it doth not absolutely destroy, wherfore upon a sober review of al I doubt not, but as many Oaths and Leagues are transient, so to shew that this according to its nature, and as it is originally a League or Covenant, that is, as it is a formall compact, relating to the publique and united corporation of severall Nations and Magistracies (by which each people were united together, and without which neither people were respectively to act any thing separately within and against themselves) I say I doubt not but to shew that such a Covenant, uppon what hath interven'd is expir'd to us the People of England, and that without any default of ours ; And though our Magistrate would give it a new life and obligation; yet to many principall things it can oblige no longer ; and for the next we are to consider that though something of our first end in reformation streame through the Covenant ; yet its spring head rises higher then it ; which end we are in all formes to pursue still, & are now left ty'd to so much of the Covenant onely as we were obliged to for all our dayes withall our mights and soules, before we took it at all. Lastly, if it were granted, that the Covenant is not expired, yet I shall here shew, that our submission to this present government is no way inconsistent with it.

we are still obliged to many things of the Covenant but not *qua* league or Covenant.

In which few words though I have stated the maine of its difficulties, yet ere I apply my selfe to answer objections, I shall brietly premise what I have observed others have omitted, it being hard to finde how we may be untid

from a thing, till we have found how the knot at first was made.

Of promissory
and assertory
Oathes.

Whether a pro-
missory Oath,
which alwaies
involves a Ta-
cite condition,
be lawfull.

Ob.

Ans.

Gen. 24. 2. 34.

Of tacite con-
ditions in
Oathes concer-
ning things
possible.

Whatsoever we can say, affirme or deny, is either as-
sertory or promissory. The first relates to the time past
or present (*as if I affirme Titius to be, or have been at Rome*)
and therefore upon the very saying or swearing, the whole
truth and obligation is fulfilled, and past with the time
which accompanied it. The other relates to the time
present, as it is then sincerely said or sworne; and to the
future for the sincere fulfilling them, which yet is dubious,
conditionall, and not in our powers; *As when Titius*
promiseth Sempronius 100.l. when his ship returnes.

For this reason some say all promissory Oathes are absolutely
unlawfull, because Oathes must be true and certaine; but all
future effects of things are uncertaine.

I answer, that for so much as concerns the forme of my
Oath here, it is true and certaine, that *my minde and words*
went truly together in the act of swearing, and that I will
make *my deed and words* goe truly together, when the sup-
pos'd condition betwixt us (and which, as we mutually
consent to, is in neither of our powers at present) shall ab-
solutely come to passe. This was the case of *Abrams* ser-
vant, when he swore to take a wife for *Isaac*; a future
(in severall circumstances) very uncertaine, both in
respect of what might happen to the servant, to *Isaac* and
to the Virgin. we know what hapne'd to *Job's* Children
and Family through the accident of warre, and the ma-
lice of the Devill; and how *Joseph* was shuffled away by his
owne friends and kindred.

It is not enough to say, such suppos'd tacite conditions
cannot be in Oathes; For first, If such conditions be in
promises, and that I may lawfully make a promise to a-
nother, then I may lawfully sweare a promissory Oath
to him, which we see cannot be separated from such con-
ditions as are not, cannot, and need not be exprest be-
twixt us at the beginning. For (to take away the sup-
position of fraud betwixt us) we both agree in this that
we

we cannot foresee with what circumstances our futures may be perplext. Therefore it is sufficient that we swore *things not necessary, but possible*; such as might happen or not happen, because depending on things which depend not totally on us, nor on our will, but rather mixtly on the wills of others, and on that which to us is change or fortune, For which reason he is not forsworne, who effects not alwaies what he by Oath promiseth, no more then he sinnes, who alwaies effects not his simple promise.

Secondly, This tacite condition in a promissory Oath, and in things *naturally and morally possible*, is proved by the very nature and definition of the Oath. *For it is onely an attestation, and imprecation of God in such manner, that if the promiser faile, he would have him to whom he promiseth, understand, that he puts himselfe under Gods severe wrath.*

From hence it is to be noted, that the bare promise The obligation of a pact, or promise with an Oath, or without an Oath, is all one obliged as strictly before he swore, as after he swore; and the reason is, because he was obliged by nothing, but by that which was in Pact. The investing it with an Oath, or with Gods punishment, relates onely to the *Penalty*: so that a promissory Oath signifies no more, then such a penalty upon such a promise: But a penalty (as we know) in law and equity relates onely to that which is unlawfull, such as is the violation of a Pact.

The addition of never so many penalties, to a thing in it selfe unlawfull, can never fasten any obligation on me to doe it; Nor can severall Penalties to an obligation in it selfe lawfull, adde any thing to the first *Jus* or right of it, but onely *to my future feare*, least I doe injustice.

The Capitall question therefore in these cases will be, What the nature of the things are to which we obliged our selves at first? For according as they stand or fall, our relations or obligations, to them stand or fall whether we will or no.

Thirdly, We finde such tacite conditions, conceal'd,

1 Kings 2. 20. and suppos'd in the Oathes of *Solomon* to *Bathsheba*; of
 21. 22. *David*, concerning *Nabals* house; of God concerning the
 1 Sam. 25. 22. destruction of *Ninevah*, and of *Abrams* servant concerning
 Jo. 3. 10. *Isaacs* wife, &c.
 Gen. 24. 2. 3. 4.

By a reflection on all this, *viz.* That seeing there may be a promise, and consequently a promissory Oath; and that the nature and obligation of a promise, and of such an Oath, is one and the same, we have gain'd a great point, *That the Covenant (which is a promissory Oath) is not in its owne nature of an eternall obligation*, but is involved in tacite conditions and accidents of the world, which may justly incumber us from effecting it, or from being further obliged to it, as well as other promises may, which yet are made *bonâ fide* at the beginning. The difficulty onely is to see, whither *de facto* that hath interven'd, which hath now taken away the *formall and originall obligation*, which we of the people had to it at first, by authority of our Magistrate; and so taken away, as we may be secure and out of feare of the penalty, which we then submitted to in it.

Argu.

The Covenant
 a politicall or
 State Oath.

I shall not here make use of what others have laboriously argued; That the matter of the Covenant is such, as we cannot be obliged to, but let it be as good or as bad as men please to suppose; I say in the first place, that all the good or bad, was form'd into a *Politick Oath*, authorized upon two Kingdomes, by the sanction of two publique Magistracies; who as collaterals obliged themselves to cooperate faithfully together, and obliged those of their distinct Nations, to cooperate respectively and subordinately with them, for attaining a former end in such a way of Reformation, as is therein exprest; but by such meanes, as they in their publique and respective capacities, not we in our particulars should judge most consonant to equity and true to religion. For which reason we happily are pointed at there, *onely in our private places and callings*.

The subordinate
 conditions of this
 Oath.

Here therefore there is a relation of severall things
 con-

concurrent, viz. *Of two Magistracies* united as a meanes for the ealier reaching the end of those respective reformati-
 ons, which they were obliged to make before they entred in league, and *of two people*, who by the union of their respective Magistracies, passe (for so much as is therein exprest) into an union one with another, and are to have their private capacities and endeavours managed by them, and never against them by any virtue of this league. Besides it is a considerable circumstance in the Magistrates managing the whole, that states or civill constitutions by reason of the diseases of ambition and avarice, are naturally as much subject to future changes, as any other things are; and without the supposition of tacite conditions, we may as little sweare to preserve the State of a publique body, as we may sweare to preserve the State of our own particular bodies, or as a parent may to preserve his Childe, which when it shall be taken away by diseases, or by justice, he may be sorry for the losse, but may not justly complaine of it. And indeed so it is come to passe without any default in us of the english People, or of our publique Magistrate (under whom we were to act in these private places and callings) that neither of us can be said to have laid the Covenant aside, although we could not keepe it from expiring; because the failing was in that which was never suppos'd to be in our powers viz. in many conditionall things which came cr offe, and in the breach of fidelisy in another collaterall and concurring power.

If you please to object here as an aggravation, and an incitement for us of the Covenanted people to rise kill and slay, that the Covenant is buried not as a thing really expired and dead, but that the people out of interest must be told so, onely because the former Magistracy is really laid aside and changed, which if people should thoroughly consider, would quickly make them finde matter enough in the Covenant to take armes.

I shall not in the way of answer to this repeate any thing concerning the cause, the meanes, and the concur-

Ob.

Ans.

repices to this our present change; every Covenanter both of *England* and *Scotland*, knowing well that there was no change of Government here, till the Covenant was Nationally broke (and so many here were insnared, both Royalists and Parliamentarians) by the Scots, who thought to have us'd it for a change of Government, and as a stratagem to give law in another judicatory: Neither as I argue in this place, how compatible any change may be with a Covenant so conditionall, in which Kings as Parties are totally excluded from judging either for themselves or for others, which point shall be further argued at last ; But I shall content my selfe to take what is here granted in the objection, *viz That the Government is really changed* ; The consequence then to us of the people will be, that seeing by the fourth Article of the Covenant, we may not without apparent breach of it, act the sence of the Covenant, but as we receive it from our respective and supream judicatory of *England* onely, and that the said Government which it relates to, is confest to be gone, have you not then clearely confest that the obligation to act any thing publicly by Covenant is likewise gone? according to an old Axiome, *Sublato relato tollitur correlativum*.

The Covenant
obliges us not
against the
fifth Com-
mandment.

If this present Government which we are chang'd to, and which now protects us, should thinke fit by the way of Covenant to give a new life, to that remaining part of it, which may be observed, yet you will not allow any obedience to them, though in things never so lawfull ; Neither will that fourth Article allow me to obey any forreigner, nor those without whose consent the Covenant was made, and consequently without whom it is to be interpreted, as the late Proceedings of the *Scots* at the *Hague* plainly shew : So that after all this, if I in my private capacity be as you say still indispensably obliged by it, to begin or assist to publique troubles, do you not fall into a worser absurdity, and maintaine an Oath against the fifth Commandment, or against all Magistracy, which

which is an impossibility? Nothing ever cautiond in termes more expressely for our duty of *making discoveries, of bringing to condigne punishment, of our supreme respective Jurisdictiones* and the like then the Covenant did, which are

The Covenant makes not each man a Magistrate.

things relating to none but our supreme Magistracy, unlesse you please plainly to assert another Absurdity, that every single man who hath taken it, is thereby absolved from his Magistracy, and is made one himselfe to judge of the other, and thereby authorizd not by way of Toleration to professe but to establish what Religion he would, to punish at his own tribunall whom he would, and to reforme the state as he would. For he to whom you will allow a capacity of making warre, hath also a Capacity of making Peace, and Lawes for the security of his Peace.

Thus we see how the Government is changed, and the formall obligation of the Covenant at an end; But what if I should grant you by the way of supposition, that in case both the Covenant and the former Government were standing together in as full force as you desire, and as it was when the Scots first delivered the King up to the Parliament of England? I would then know of you *whether if our Parliament had then for reasons best known to themselves (and of which wee can never judge competently) declared us of the People, free from any further obligation of the Covenant, might we justly have thought our solemne League at an end, and that we ought to act nothing publicly any longer by it?*

If you will say we should have been still obliged to act upon it, then I aske you againe *under whom?* For I have proved it must be alwaies under a Magistrate, and you have all along proved that it must onely be under our lawfull Magistrate, how lawfull soever the thing be in it self which is commanded, you would not allow the King to be the person to be obeyed, whom you thought fit to keepe in an imprisonment. The Parliament (according to our supposition) would not be any longer obliged to it, or be obeyed in it, and the Scots acknowledge themselves in the 4. Article to be the supreme judicatory onely

only of Scotland, and I cannot act publicly by a private Capacity or Magistracy. Ergo in such a case, the Covenant how good soever, had not obliged any longer, nor is it in it selfe eternall.

Obj.

You will not deny perhaps but one man may free another from an Oath when it is for the worldly profit of him who pleases to release it, as every man may throw away any thing of his owne right; but you will not allow it in Sacred things where God is a Party.

Ans.

Num 30.

How a superior may free an inferior from an Oath even in that which belongs to God.

I answer, that though no Parent can dispence his wife or childe from the feare of God and the duties they owe to him, yet he allowed him to break the childs vow for giving him a sacrifice, and both to be guiltles; and then why may not we be now absolved, if our publique Parent judges it not fit that wee should be any longer tied formally to a conditionall Oath; though it have relation to some sacred things?

You will say no, because the Parent did not as a party solemnly concurre to the Childs vow, and having never consented he might the better dissent; but our publique Parent did concurre as a party to our Oath. The Parliament and People tooke the Covenant joyntly together, and it is said that if the Father beare the vower, and contradicts them not in the same day, then he confirms them, and cannot break them without iniquity,

To this I reply, First, that v. 16. it is said the Childe is free after the dissent of the Parent, and that the Parent is charged with whatsoever was amisse in him, which is excuse enough for us of the people. Secondly, the difference is great in a maine point of the paralell; because after the concurrence of the Father to the childs vow for sacrificing something to God, that might be compleated in the Temple without his further helping it on; but we cannot doe any thing in our case without the cooperation of our publique Parent all along, neither can he do any thing without the concurrences of many other possible, but uncertaine conditions, and if he in effect finde those conditions have come contrary to *his publique endeavours,*

deavours, what may we doe? will it be enough for us to rest in having attempted the *utmost of our private endeavours with him*? or will you authorize every man upon private judgement or interpretation to begin a warre in his own fence.

A League or Pact authorized betwixt private Neighbourhoods over a whole Nation or over part of it, is not as a League betwixt Prince and Prince: because these have conditions exprest how and when to begin warre upon one another in case their Leagues be broken. But there is no such thing exprest *in terminis* in that Covenant which we have made one with another, and which we made subordinately to our Magistrate: so that if we or the Magistrate faile, we are equally left to Gods justice solely and to the forfeiture of our own penalties due to him, and every one is to answer for his owne deficiency in his own Station: And being left to our selves againe, we are left to act onely so much of our Oath or of the ancient end of it, as we were bound to before we swore: which is a great deale; because we were bound by *precept* before wee were by *promise* all the dayes of our lives to do our utmost for the glory of God, and the good of our neighbour.

Secondly, Princes or States who by the supremacy of their powers, are able to make Lawes for their separated Kingdomes; when they unite their supream Powers, they are able to make a common Law for all their Kingdoms together, which is called a League or Compact; But a Law when it comes to be broken (which is a publique thing, and therefore of every mans interest) may be vindicated publicly by Warre, and by those who have a *posse regni*. But I cannot say the same may be done for the Covenant, for *quo jure* can it be done?

The Scots indeed by one way of arguing make it greater then a Law, and by another make it lesse; which is when they one while affirme it unalterable and unrefractable as a divine text, and another while confesse it was not made by the joynt concurrence of all those who with

The difference
betwixt this
our league and
those of Prin-
ces for autho-
rizing war

The obligation
of the Cove-
nant, how lesse
then the obli-
gation of a law

onely of Scotland, and I cannot act publicly by a private Capacity or Magistracy. Ergo in such a case, the Covenant how good soever, had not obliged any longer, nor is it in it selfe eternall.

Obj.

You will not deny perhaps but one man may free another from an Oath when it is for the worldly profit of him who pleases to release it, as every man may throw away any thing of his owne right; but you will not allow it in Sacred things where God is a Party.

Ans.

Num 30.

How a superior may free an inferior from an Oath even in that which belongs to God.

I answer, that though no Parent can dispence his wife or childe from the feare of God and the duties they owe to him, yet he allowed him to break the childs vow for giving him a sacrifice, and both to be guiltles; and then why may not we be now absolved, if our publique Parent judges it not fit that wee should be any longer tied formally to a conditionall Oath; though it have relation to some sacred things?

You will say no, because the Parent did not as a party solemnly concurre to the Childs vow, and having never consented he might the better dissent; but our publique Parent did concurre as a party to our Oath. The Parliament and People tooke the Covenant joyntly together, and it is said that if the Father heare the vower, and contradicts them not in the same day, then he confirms them, and cannot break them without iniquity,

To this I reply, First, that v. 16. it is said the Childe is free after the dissent of the Parent, and that the Parent is charged with whatsoever was amisse in him, which is excuse enough for us of the people. Secondly, the difference is great in a maine point of the paralell; because after the concurrence of the Father to the childs vow for sacrificing something to God, that might be compleated in the Temple without his further helping it on; but we cannot doe any thing in our case without the cooperation of our publique Parent all along, neither can he do any thing without the concurrences of many other possible, but uncertaine conditions, and if he in effect finde those conditions have come contrary to his publique endeavours,

deavours, what may we doe? will it be enough for us to rest in having attempted the utmost of our private endeavours with him? or will you authorize every man upon private judgement or interpretation to begin a warre in his own sence.

A League or Pact authorized betwixt private Neighbourhoods over a whole Nation or over part of it, is not as a League betwixt Prince and Prince: because these have conditions exprest how and when to begin warre upon one another in case their Leagues be broken. But there is no such thing exprest *in terminis* in that Covenant which we have made one with another, and which we made subordinately to our Magistrate: so that if we or the Magistrate faile, we are equally left to Gods justice solely and to the forfeiture of our own penalties due to him, and every one is to answer for his owne deficiency in his own Station: And being left to our selves againe, we are left to act onely so much of our Oath or of the ancient end of it, as we were bound to before we swore: which is a great deale; because we were bound by *precept* before wee were by *promise* all the dayes of our lives to do our utmost for the glory of God, and the good of our neighbour.

The difference
betwixt this
our league and
those of Prin-
ces for autho-
rizing war.

Secondly, Princes or States who by the supremacy of their powers, are able to make Lawes for their separated Kingdomes; when they unite their supream Powers, they are able to make a common Law for all their Kingdoms together, which is called a League or Compact; But a law when it comes to be broken (which is a publique thing, and therefore of every mans interest) may be vindicated publiquely by Warre, and by those who have a *posse regni*. But I cannot say the same may be done for the Covenant, for *quo jure* can it be done?

The obligation
of the Cove-
nant, how lesse
then the obli-
gation of a law

The Scots indeed by one way of arguing make it greater then a Law, and by another make it lesse; which is when they one while affirme it unalterable and unrefor-
mable as a divine text, and another while confesse it was not made by the joynt concurrence of all those who with

them are essentiall to the making a publique Law. I conceive we may safely say it is of a Constitution inferior to that of a Law, and therefore its obligation is lesse, though its penalty be greater to the failers in it. It was made use of, only as a *convenient instrument or meanes*, for the better attaining some lawes as its end. A Law it was not because it was not made by all the then Legislative powers of the Kingdome. For the Kings concurrence in England if not in Scotland, was then held requisite for passing a Law and he ever dissented from this Covenant. Halfe the inferiour sort of the People have not any Interest in it, nor have taken it: And not having any obligation to it, how I pray you can they justly be drawne into the Penalty due to it? as they must all be, if a Warre (which is effectually a Penall thing) be begun though by a part of the Nation; for the nature of Warre is such, that it puts a whole Kingdome into imminent danger of desolation, though but begun in a part, and by a party of it.

War how an unjust penalty for the meere breach of Covenant.

Thus far I have endeavoured to shew the true fast and loose of all promissory Oaths, and how their obligations cease according to the nature of the things which they are affixed to.

Object.

The Author of the grand case of Conscience p, 1. Objects, That if inconvenience may break a promise or disengage an Oath, then many may be cheated, and David was much mistaken, Psal. 15. 4. Who saith he shall dwell in Gods Tabernacle, who sweareth to his own hinderance and changeth not.

Ans.

Of the obligation of such a promise as may be fulfill'd solely by the promiser.

I answer, David speaks here of an Oath violated by a change onely in the Promiser, who by his Oath hath past a right to another: and therefore can no longer dispose of it againe; the party to whom he swore may dispose of it as he pleaseth and may dispense him of it; because no man hath a right to make another man keepe his owne, longer then he please himselfe. It is a duty to pay a debt, but not to receive it. Finally, this is nothing to those cases where the change is not in us, but in other persons.

persons, and in things which relate principally and jointly to the fulfilling of the Oath or Promise. For if I promise *Titius* a sword at such a time, and he then chance to be mad, (an accident not exprest betwixt us at first) am I bound to put it into his hands in this change because I was the first promiser?

Whereas it is said, that the obligation of somethings end, because they can beno longer kept, *as that of the Kings person &c.* He anſ. p. 11. *That if men shall by violence put an end to the thing, that thereby the obligation may end too, that is a breach of Covenant. A woman promiſeth to be faithful to her husband so long as he lives; but if she, to marry another, kills him, she breaks her promise.*

Ob.

Anſw.

I grant it easily that they who use violence to break lawfull contracts, sin grievously; which is a thing now confest in every Church of Scotland; but what is that to those who use no violence to breake them at all; nor can helpe it when it is done although many be undone by it? One thing I most earnestly desire to learne in this question propounded (Igueſſe) concerning the Kings Death; which was a consequence of the others breach and tamperings. *If by the Covenant we were indispensably obliged to preserve his Person, How came it to passe, that we were obliged by the same Covenant to wage warre against him?* I have heard of a distinction betwixt his power and his person, but never of any betwixt his person and himſelfe. So that if the Covenant could have dispenced any souldier of England or Scotland to kill his person by an accident of Warre (as his life was oft in danger before he came to the Scaffold) his Death had beene violent, and the obligation to preserve him had ended, and yet according to this argument the Covenant had not been broken. Why then should these men thinke the world so dull as not to understand plainly enough, that the Covenant provided for his Death more wayes then one? True it is, that the Covenant held out a faint and a conditionall preservation of him, and after all no man can sincerely stretch it further: From whence if we will let him judge this one controversie, he hath left it

Of the obligation for preserving the Kings person by covenant.

recorded to posterity, *in his supplic^d book Chap. 9.* In vaine is my person excepted by a parenthesis of words, when so many hands are armed against me with swords: Moreover in His Chap. of the Covenant, he feared it provided for him in a Logick too loose and circumstantiall. From all which what did he conclude, but that he would not allow of a Covenant-argument for his life?

How the words of preservation in Covenant, provided more for the Kings suffering, then the words of punishment provided for Delinquents sufferings.

I know the answer here is obvious, that bullets were not shot directly against him (as few are against any in a Towne or in a Battell) and that if he would have withdrawne his person, he should have beene out of danger; but then I pray you what advantage had he in this by Covenant, more then any common souldier of either side? who when they retire, are equally out of danger, Nay he had lesse advantage, For by preserving him, they meant *kee. ing him* after he was rescued from others, and by keeping him they meant *not him primarily*, but something else, to which all consideration of him was to give way. As for others which were to be brought to punishment, they had some of them leave to go beyond the Seas, others to enjoy liberties at home; and of all the excepted persons, there was never any of them who was here deprived of life, but as our troubles and warres increast, their number (which was strange) lessen'd even to six or seven at last, and most of those out of the Kingdome. I know they have distinctions wherefore so much might be remitted to those, and not to the King, although he had on his behalfe the word *preservation* in the Covenant; but these distinctions are but their strong justifications for that which is the bottome of this argument, if all Covenanters durst speake plainly alike.

Ob.

He objects. p. 11. That if according to Covenant we should preserve the priviledges of Parliament, against a Malignant party that would have taken away but five Members; why not against an Heriticall party which took away above two hundred?

Ans.

I answer, That when the five Membere were in danger

ger, there was a Session of neere all the Lords, and of all the Commons to authorize the People to bring others before them to condigne punishment: But where is there now any Session of a supream power in this Land, before whom we ought to bring the present Parliament? under what formall supream Magistracy can we now co-operate or receive publique orders, but from them? who have commanded no such thing against themselves. Lastly the Covenant makes not us private men Magistrates, neither doth it authorize us to a war disertly, as to apenalty.

How meant that the excluding member, ought to be brought by us before the excluded.

Certainly he doth not meane that the remaining Members make no house, because there are more now kept out, then are admitted into it. For would not such an Argument clearly determine, that the house of Lords was never a house, since the Major part followed the King, under pretence, that they durst not sit any longer at Westminster? Or else if the sitting of so many Members as are enough for a legall vote be illegall, after others are forc't away; How shall we justifie that Session with a new speaker, when the rest were forc't to the Armies protection from the Citizens servants and apprentices, who forc't them, and Indangered their lives in the House? Or how shall we justifie the house of Commons for sitting, when the five Members durst not appear? Though force should not be used without a desperate occasion be given (in which case the preservation of the substance, is alwaies above the consideration of a formality as hath bin argued by the Parliament ever since their first warres yet they know few or many sitters in the House, is not a thing of our examination, if they be above forty.

The second Demurrer p. 6. Objects that we have sworn by no terror to withdraw our selves from this blessed union, but to continue it all our lives against all opposition.

Ob.
Ans.

If there were nothing else in the world yet these words sufficiently prove that we are now absolutely absolved from the Covenant; for first, they relate to a State and time of *Union*, in which we were according to the united strengths

The Covenant relates onely to a time of union, with and under the magistrate.

How the league
of nationall u-
nion came to
be ended

Strengths of two Nations, two Magistracies, and of the respective Magistracies and People here enabled, yea commanded to make great opposition against those who then were actually united in armes against the Parliament. But now that we are supposed by these Authors to be dis-united as our enemies are, and that the Magistracy is changed, our state of subordination somewhat varied; that the Links of our former chaine are broken; and that the Commons act alone without a King, as the Lords & Commons acted before without one, and that the Scottish Nation by their invasion, and their attempting to divide the King from us, and us one from another, by their declaration made preparatorily for division, thereby to favour invasion afterward, have in the face of all the world broken whatever was of Nationall union and Peace, yea and all that which was of confidence betwixt our selves at home, and (which was yet more horrid) in encouraging one principall Army in *Ireland* to fall off from the advantages it had against the bloody Rebels, to turne their swords against the Parliament it selfe, only out of a by end of ambition, yea now (that the war being ended) we are to enter into an *Union of cohabitation* or in cooperation (as they have done in Scotland it selfe) with those who during their united hostilities occasiond our Nationall Union, are we I say after all this, in the selfe same Union which they at first hoped might have been continued to them & us for all our lives? That Union suppos'd the warre which then was, with the rest, of the circumstances, and if we wish the same effect or Union now, do we not thereby wish the same cause or warre againe amongst us? as we were to oppose armes to armes, so union to union, and certainly that Union of the Parliaments of both Kingdoms was at an end, ever since the Scotch Army here received their money, and returned home, leaving the Delinquents of both Nations dis-united and clearly reduced to receive condigne punishment, (as the Covenant calls it) at the respective judicatories of both Kingdoms

Kingdoms; and if it ended not then, yet it could not be consistent with their Declaration and divisions presently after; and if not then, yet I am sure it could not be consistent with their Nationall invasion, and tampering to divide all in England and Ireland, the effect whereof hath been a change of Government here, and hath made them totally distinct forrainers to us.

The Demurrers premisses in this Argument by a new logick, relate onely to a State of publique Union, and his conclusion relates only to a State of *publique dis-union*, of the consequences whereof the Covenant saith nothing at all in any Article; It enioyns the bringing of Delinquents to condigne punishment, and those *private* persons likewise among our selves, who should helpe on, either divisions amongst us, or the invasion of either Nation first. But whether should they be brought to punishment? The Covenant answers, Either before the respective judicatories of each Kingdome (who onely have power to judge of what is *Condigne*) or before no body.

It speakes likewise how we should unitedly venture our lives against the Enemy which then was : it doth not, or at least ought not to sweare us to get the better of them for ever, nor that we should in a rout or dis-union end our lives against all opposition, and without quarter. If the termes of *our utmost endeavours*, and *all the dayes of our lives*, are to be understood litterally, and that we must not survive any violation of the Covenant, then why do these Gentlemen, (who conclude themselves in the State of the Covenant thus understood) thinke of living till to morrow? The termes of *forever*, or *for all the dayes of our lives* are not in our contracts to be understood naturally, but morally ; For we finde it plainly in the Judicial law, that after a Jew had taken a servant, and bor'd a hole through his eare *he was (as the Text saith) to serve him for ever*, although one of them might possbly have dyed the next day, and both of them after a while might have

The meaning of our utmost endeavours, and of all the dayes of our lives in the Covenant.

have been made captives to others. The law calls the league of Marriage *indivisa vitæ consuetudo*, a tabernation for all the dayes of our lives. For so it should be *ex voto contrahentium*, in the sincere desires of the contractors; Yet we know, one ordinarily dyes before the other, and that many conditions may happen to legitimate their divorce afterwards, though the contract was never so religiously made in the presence of almighty God at first.

The Scots in their late proceedings with their King at the Hague pag. the 6. interpret the words of utmost endeavour, as morally as we doe here? For the Commissioners of the Kirk said, they us'd their utmost endeavours to save the Kings life according to Covenant; but how? They answer, that it was in Papers, messages, Declarations, Testimonies, and Protestations onely; they name not warre, or bloodshed, for they protested against that way last yeare, as contrary to Covenant, when the Parliament of Scotland invaded us; and I hope for the reputation of the religion they professe, they have not altered their publique commentary of that sacred Text contradictorily so soone.

To conclude, Either wee are still in the Union of the end of the Covenant, or we are not: If we be in it, then these breake the Covenant, by seeking to dis-unite us: If we be not in it, where then is the Article for our private forming a warre upon it? and under whom, if not under our English supream judicatory? and if they call us not out to revenge that which was more then a bare falling off from the Covenant last yeare amongst our selves, (when the Scots exercis'd such high hostilities, and were the first shatterers of all our frame (which otherwise might by Gods blessing have cemented againe) how durst these private trumpets sound the alarum, and open the wounds of the Nations once more? Though the respective judicatory of that Kingdome now cannot make that which was once done, undone; Yet by the present punishment of the Kirke, it is acknowledged that they

The Covenant how more then broke by the Scots hostility.

they hold the Covenant to have been more then nation-ally broken, in regard of the harme and damage which was done to us after it was broken. For there is a great deale of difference betwixt ceasing to helpe according to a league, and acting hostilely contrary to it, especially when no such penalty is in such a league exprest betwixt the parties.

But you will object, that if the Covenant were so broken in one or two points by them, yet it doth not follow, that the whole Covenant is broken thereby, and dead in every part.

Obj.

I have answered before that we are no longer obliged to any thing in it by the way of League and Covenant; The reason here is, because here in leagues every thing is to be observed conjunctively, otherwise all is broken; which is so true and cleare, that if we looke upon Gods league and Covenant with Israel, we shall finde the same thing pronounc't there. God said, *If yee keepe my Commandements, I will be your God, and will maintaine you in your plenty, and in your Land: Yet he said, that if they broke any one Commandement in their part of Covenant, they were guilty of all, and that all should be at an end betwixt them: just as St. John in the conclusion of his Revelation saith, Who ever shall diminish but one word of that Booke defaceth the whole, and looseth the whole benefit which he might expect thereby in the holy City, by vertue of the second Covenant.*

Ans.

whither the nationall breaking of one part of the Covenant put an end to the whole.

It is asserted, that there is no clause in any Oath or Covenant, which in a common sence forbids obedience to a present Government: To this the grand case of Conscience answers, That the Covenant engages to another Government, therefore it forbids obedience to this, and Oathes ought to bee their owne interpreters.

Ob.

Here he at first begs the question, whether the Covenant can now engage us or no? seeing it hath beene proved, that that which is now nothing, cannot now engage us to any thing; and consequently our submitting to, and acting under the present Government, cannot

Ans.

be contrary to Covenant; because things which are contrary one to the other, must have actual being together at the same time. But the very being of this Government, supposes the nullity of the Covenant, whose death (as it was other where contrived before) gave life to that mutation here afterwards.

The Covenant
(of all oaths)
interprets it
selfe least, espe-
cially in the
positive Go-
vernment,
which it would
establishe, and
in Religion.

Though the
Covenant were
in Force, yet a
change of Go-
vernment
might be con-
sistent with it.

Secondly, Though the Covenant were still valid and in force, yet when we were sworne to it first, it found us actually out of that Government here pointed at, viz. Of King Lords and Commons. For that is the supream Government of a Country, which makes a supream law there: But at that time the supreamest humane law, which (according to these gentlemen's opinions) was ever made in England or Scotland, or perhaps in all the world, was made without the King in those Kingdomes, and against his dissent. For which reason the Covenant engages not so positively for King or Kingly Government, as for the Union of the Covenanters in any forme and against any opposition; Whereupon the Presbyterians when it was (as most conceiv'd) in their power, to reestablish King or Kingly Government, they omitted both for many dayes of their lives, without question; because they conceiv'd it not a Government absolutely necessary by Covenant. When D. Hamilton entred England so hostilely for that end, and as he thought by virtue of Covenant, yet he was excommunicated for it by the Oracles of the Covenant.

Lastly, The reigne of the Covenant since the first day of its birth and obligation, was never yet a Regall reigne, nor not for one day anywhere; so that the change which is, is not determinatly contrary to that principle, out of which (according to the circumstances of security) any Government may be moulded for any place. For which reason if I should grant you that the Covenant were not expir'd, and had not beene so palpably broken, as it was betwixt the Nations; yet Scotland (if they had pleas'd) might have beene Govern'd by a King, and England by a free

a free State, & yet both consonantly enough to Covenant and without any contrariety, because the circumstances of securitie in one might have been different from the circumstances of security in the other; which though different, might as well have been mutually maintained as their discipline differing from ours might have been preserv'd by us. From all which it appears, that that Oath is Cloudy in the positive or set Government which we ought to have, and so cannot be justly called it's *owne interpreter*, besides a reformation according to the word of God; and the example of the best reformed Churches, supposes such a latitude of Logick as would (if all sides should be heard) give us as much exercise as all our warrres have.

And certainly the Covenant is alike undefin'd in Religion and in civill Government. For we swore to bring the Church Discipline in the three Kingdoms, to as neer a similitude as the constitution of the places would bear, *not into the very same*; and as for the civill Government, it was to receive its *forme* in the security of that, just as water doth receive not onely the figure of the Pot or Glasse into which it is put, but its conservation from being totally lost and spilt. But how then will you free your selfe from this contradiction in asserting that the civill State is unalterable by Covenant, when that of the Church which formes the other is so much alterable? and seeing that of the State receives from this, not only its form and being, but what ever else you alone please to attribute to your security in it? From whence I conclude again, that a change of Government is consistent with Covenant, & that a submission to it in lawful things is much more, and consequently it engages not to any one determinate Government, and so is not against this of ours.

I beleve it hath been a frequent observation of many, who have calmly convers't with our Divines and others zealous for Presbytery, That they have found them little satisfied with that sort of Presbytery, which

How the Covenant necessarily points at some change of Government.

Scotch Presby-
tery fit for any
Government
but the kingly.

our Parliament modelled for us of this Nation; as ha-
ving little affinity with the Couenant. My beliefe is;
that they in that discerned not the consequence of their
own dissatisfaction. For if their consciences regulated
by Covenant, can admit no civill Government, but the
Kingly (which they so much argue for here) and if
the Covenant and a Scotch Presbytery (whose right
they hold to be Divine) be essentially linke together,
Then we and they may all of us learne, not onely from
direct inferences, but from the declar'd experience of the
Sonne, the Father, the Grandfather, and great Grand-
Mother, that is of the three last Scotch Kings and one
Queene. That if the Scotch Presbitery come out of the
Covenant then Kingly government cannot derive from
it, because they are jurisdictions incompatible and in-
consistent in the same place, and if one can conserve it,
then may we say as much of the other. How much Ma-

The judgement
of experience
of Mary Queen
of Scotland.

Of King James

ry Queene of Scotland experienced of this, let the world
judge by that which she wrote both with inke in her Let-
ters, and with her blood on the Scaffold. For how came
she to be Beheaded in England, but by Mr. Knox (and
the Kirkes having done little better than) put her into
the hands of those who could not keepe her long alive
with security to themselves? King James hath writ and
argued largely concerning his dangers & sufferings under
it, & it is yet remembred in what Dialect they of the Pres-
bytery were wont to Preach and Pray against him to his
face, and he not know how to remedy it, or by what
right to top theirs. When he came into England he profest
his deliverance from that subjection not of small satis-
faction to his minde, and therefore at this distance he con-
trived how to extinguish or check that rate there, & after
some progresse in that worke he himselfe dyed peaceably
in a milder Country, But K. Charles with that Crown in-
herited the consequences of that undertaking, for his first
troubles began in the controversie of that Presbytery;
and what a preservation he thought the Covenant (from
which

Of King Charles
vid. Scotch
Declaration,
27 July 1649.
P. 14.

which it seemes their Presbytery is so inseparable) might be to him and what his fate was and who helpt it on, nay who diverted him from agreement here, all the world knowes and in his writings likewise he hath showne to the world that he himselfe was not ignorant of it; This only is the wonder, that in the midst of this their specious zeale for Kingly Government, the Covenant should be so silent concerning Royall Posterity, or for their succession, in case the Scots or English Souldiers had kill'd the King casually before he had given them the satisfaction which they required; the consideration of all this, with some other lately offer'd to the young Prince at the Hague, by the Scotch Commissioners, and the satisfaction which they in their late Declaration require from him, as they did from his Father, have questionlesse made him scruple, so long at his adventure into that Country, though so much invited. For they told him p. 14. 15. *That for longer then these eight yeares, yea ever since that Queene Mary, their fundamentall priviledge hath beene to assemble in Parliament; and to conclude there of themselves, either without King or Kings Commissioners; and that if his Majesty refuse those their reasonable desires, they shall be constrained in so great an extremity, to doe what is incumbent on them, to preserve Religion, and the Kingdom from ruine.* Here they plainly acknowledge, and assume that supream power and right, which shall be proved here more evidently towards the conclusion.

vid. Decla. p. 8. 10.

Scotch proceed, at the Hague with the Prince, p. 14. 15

But because I intend truth here in the simplicity of my Heart, and no way to swell this Argument, either with passion in my selfe, or with scandall to any man else therefore I shall sincerely unfold what hath long been a mystery to my selfe, and for confirmation of what I have asserted here so positively, I shall give the reader the expresse word of our great English Covenant-champion, and of Master *Hinderson* especially the Scotch Champion, betwixt whose fingers the Covenant it selfe was moulded.

(60) *which is the right of the Son, and continuance of the Government; are as much against the vices in and about him, as about the Father. And should he doe as his Father hath done, they who are now for the performance of this Oath and Covenant, would as truly joyne against him as against the Father.*

Who can call this Regall Language? which yet will be lookt on as the English Presbyterian-alarum, though but by one man. Hee had done well in speaking of the performance of Covenant by us all, if he had offered a Catalogue of all that which would fulfill the Covenant in all its termes without any further interpretation; But that which is supposed eternall for time, is likewise infinite as to the matter which it may relate to by the application of humane Logick.

The supreme
power in Scot-
land in whom.

Mr. Hinderston in his Newcastle conference, with the King p. 24. 25. saith, That the reformatory power is in Kings and Princes. Quibus deficientibus, it comes to the inferior Magistrates. Quibus deficientibus, it descends to the gresse of the people, but yet supposing still (as he saith) that they be all of them rightly inform'd. For which reason though he conceal'd it from the King, yet he meant, that the reformation of any of these three powers, according to the Covenant must be judg'd & reformed afterwards by some other body of men here not named. For I conceive that he who is ultimately to judge of the Reformation and of its publique obligation, judgeth likewise of the reformers themselves though never so high or never so low; and to this strange opinion he would faine initle two English Episcopall Champions Bilson and Jewell.

Here I must confesse I was at a stand, concerning the nature and interest of the Covenant, and was sorry to see that I was no plainly told whether it would carry me (laden with so great a curse) nor where it would set me downe. At last I found in the same Author. 32. 33. Speaking of the subordination of powers, under which people were finally to obey, That he would not willingly

Ingly tell his Majesty, whether the Church was subordinate to the civill power, either to King or to Parliament, or to both: For (quoth he) *Indubitably disclaiming such a headship as the Kings of England have claimed, or such a supremacy as the Houses of Parliament crave, with appeals from Ecclesiastical Judicature to themselves.*

No man may thinke but Mr. Henderson meant this for the jurisdiction of England, as well as of Scotland, for hee spake of Houses of Parliament which were plurall in England onely; and though it may seeme strange at the first view, to heare one say, that the Scotch Nation state the supremacy of England in their Country, or that they endeavour a direct change of Government, here, (which they have indirectly attempted for a long while.) let every man judge not by our subtilties, but by the Kirkes Declaration, 27. July, 1649. p. 11. 12. Their words are, *That their King after his Oath of Coronation in Scotland, shall assure them under his hand and seale, to injoyne the solenne League and Covenant, establish and practise the Presbyteriall Government, Directory, Confession and Catechisme, as they are approved by the severall Assemblies of their Kirke and Parliament, in ALL HIS DOMINIONS, and that he shall never endeavour any change thereof.*

How the Scots
state the su-
premacy of
England in
Scotland.

No man will say but States like judges ought to act, *ex bono & equo con*, unctively. So that though these things which here they would impose upon us perpetually, were never so good, yet they being unequitably deriv'd upon us from their supream judicatory (in whose possession we are not so fully now, as they were last yeare in ours) we ought to abominate their designe, as much as they might the like obstruction of their Presbitery from hence, without power: then to rectifie it ever after. For these Presbyterians with us grant, That good and lawfull things may not be practiz'd under a power unlawfull, as they say the Scots would be here.

How the Scotch
Presbyterians
& ours oppose
one another.

However here I at last found who was my supream right Magistrate in the Kirke sence but then I conceiv'd I was in

Two suprema-
cies in the same
place, how in-
consistent.

a great share, because I saw the *ius publicum* of a Kingdome totally & though secretly changed. I saw all things of direct religion, and whatsoever related collaterally to its security, lodged there, and by the Kirke prejudged from the judgement of all other authorities in Scotland especially. But because religion and its security draws in all humane concernments, and that two supream collaterall powers cannot stand in one and the same place, in the same time, for the same person, but for contrary actions, therefore I knew not whither of the two supream powers the Ecclesiasticall or the Civill I should in this case throw away, for they could not in this contest by the judgement of any be both obeyed together; and I stood in a miserable case betwixt a Jaylour and a Devill the Kirke giving me to the Devill if I obeyed the Civill power and the Civill power giving me to the Jaylour if I obey'd the Kirke, which was (to speake the truth) the State of the whole Kingdome of Scotland last yeare, betwixt the the Kirkes excommunicati..., and the Parliaments Order which authoriz'd Duke *Hamiltons* expedition, in Vindication of the Covenant here: In which difference we have no reason but to like the effect, however we may dislike such a cause here.

Wherefore to answer this scruple, I positively say, That in whatsoever is of Pact betwixt man and man, or of policy in the Covenant, I ought solely to follow the civill Magistrate, and the Church here ought to follow the Magistrate likewise, as a case relating to the disputes to the warres, and to the recovering the peace of earthly Kingdomes: If otherwise, then the civil jurisdiction ought clearely to be managed by the Ecclesiastique; which is stated so no where (that I know of) but in *Romagna* and *Dutchy of Ferrara* and the other places belonging to the Pope. This I speak not as desirous to detract any thing from the sacred function of the Ministry as it contains it selfe in its own function, no man being able rationally to object any thing wherefore some might not

not *ex Officio*, be deputed to excite others to vertue and sanctity of life. But yet who can say they are not subject to the infirmities of ambition, avarice, and severe passions as well as other men? or have not our Antagonists (whether they would or no) observ'd them in these cases of worldly rights and interests, to have as oppositly, yet as peremptorily differ'd one from another, as people of any family ever did? The Devill not being able to get the Text on his side, by his wiles oft got the commentary, so that we are to be excus'd, if we hold many things in Church-men, to be but as an Apophrypha at best, which yet for esteem sake is allotted a place before anything else, next after the genuine Text,

Having thus openly stated the scruples of my own, and of many more consciences, and to take off masks not from the faces, but from the consciences of these three, and the multitude of other Scotch Casuists, who have talkt so speciously for our Covenant, Vindication of an Heirs just Title, our submitting to it, and joyning with others immediately, least right suffer wrong one day; I cannot (I say) but aske the same men plainly; *What difference in effect they finde, betwixt the Titles and right of the Prince of Wales, and of the new King of Scotland, notwithstanding all their obligation of Covenant, to submit to him as such?* Whether a true Title doth (according to Covenant) authorize obedience

It is not enough by Covenant to preserve an aery Title onely to a Prince, and by the same Covenant, to suspend all the rest of his solid power, and right? certainly his Royall commands (notwithstanding all this talke) are no more obey'd in Scotland now, then the Episcopall commands of our Countryman, the Bishop of *Gbalcedon* are now obey'd in *Turkey*. The King of Scotland's present case, & the actual change of Government there by their interpretation of the covenant

But what hinders him from exercising any Kingly right in Scotland as yet? The Covenant which is not yet satisfied, How is it then, that some of our Presbyterians say, that the same Covenant indispensably opens the doore to him here? 16thly, the King aske the Scots why they put the Law of the Covenant so to his obedience, by the

first thing which determines all his other rights afterwards? They can onely say, that they swore it in his Fathers raigne, and it is now eternall. Though I censure nothing here, yet I cannot but conclude hence; That they of themselves, as well as our Parliament, have made a Law above all other Lawes, (and more then a reformable *Magna Charta*.) For the Governatent of the Kingdome which may be exercised according to it, without Kings, and against Kings.

Against Kings.

Page 18.

Page 22.

The first thing which was ever offer'd to him from the Kingdome of Scotland, was an authority by far transcending his own, viz. that of excommunication. For (as their late proceedings with him at the *Hague* shew) hee was by that subtilty tryed whether he would refuse first to acknowledge *James Graham* (*alias Montrose*) or that great power of the Churches, by which he might be awed to greater things afterwards. To backe this likewise the Commissioners of the Synode said (p. 22) that they negotiated with him in a capacity altogether, distinct from the Commissioners of Parliament, as being persons commissioned by the Kirke, which is commissioned with a *Jus divinum*. Our Bishops certainly never undertook such a jurisdiction & supremacy, and unlesse these had witnessed so much of themselves to all the world, no one would believe that in such a poore Country, and so much forme of Religion, there could be such high passions of ambition.

Besides if it be a true rule; That he who is the maker, ought to be the interpreter of a Law, then let all the world observe one thing, That the Kirke having made the Covenant (as the principle of all supream rights both of State and Religion) then they alone ought to give the interpretation of it from time to time; as they *de facto* did not onely last yeare, contrary to the interpretation of their owne Parliament, but also for many yeares together have peremptorily prest it upon ours: So that it makes a fundamentall change of Government there, though differently from what our Parliament hath made here.

here, the *jus publicum* both of Religion and security of State with them, lying in the Covenant, and that lying in the breasts of Churchmen, chosen by one another: and our's lying in the power of Laymen, chosen by the People, and judging by the Common Lawes of equity and necessity, and of the word of God.

It were in vaine to say *the Kirke onely recommends their interpretation to the State*. For last yeare they did it with a Penalty upon the Parliament, their whole Army, and the body of the people which obey'd them; if it be a penalty to bee given to the Devill, and to bee put into a State of eternall death. Wherefore they there are, (or else none are any where) the true judges of right, who make themselves judges of wrong and of punishment.

The interpretation of the Kirke is not recommendatory to the State

To conclude how practicable soever the Covenant was at first, or how erroneously sever we may now conceive it to be extinct, or to be a principle fitted to justify a change of Kingly Government, which was actually made first of all by it and their Presbytery in Scotland; yet it being originally but a Politicall or conditionall Oath, relating to our former Unions when Warre was, and to our cooperation under our respective Magistrates only, not in a way contrary to the fifth Commandment; and that all the Magistracy which we enjoy, and by whom we are now fully possess'd, if they have not laid it aside, yet call us not out to act the remaining part of it; and that it interprets not it selfe so that each private man is not made by it his owne Magistrate; and that there is no penal Article in it obliging us private men to pursue a publique Warre upon the Magistrates, or any other mens bare neglect or misinterpreting it to themselves; who therefore can contrary to all this peremptorily warrant us now, yea necessitate us to begin, or assist to the desolation of warre and bloodshed upon it? especially seeing it is made very dubious at least whether we be now tyed to it at all or no. Furthermore how good so ever it was at first, yea though that other Nation had not given it it's mortall wound, when they attempted to give us ours, both in England and in Ireland, (which was the cause of this effect of change of Government here) yet if when it was in force, it should any other way have received a bad tincture of passion or ambitious policy among

The conclusion

our selves, why might it not by our Magistrates order, have been as well carried out of our Churches as the brazen Serpent was out of the Temple, after it was unhappily perverted to its wrong end? If otherwise, and that it must at all hazards be indirectly made a snare to peaceable consciences even after it is extinct (as hath been proved) I shall desire any pious spirit to judge, whether it doth not in such a case deserve much of Campanellas censure which he gave upon the Spaniards India Treasury, that it was gotten in blood, sailes home in a sea of blood, and never rests till it be all laid out in blood.

The Reader may be pleased to take notice that though these replies for the most part touch but on simple obedience to a Government supposed unlawfull, but commanding lawfull things, yet they virtually extend to our acting under such a Government. It is to be presumed that our adversaries not contesting professedly what hath been publickly argued in that point, do conceive the difficulties of acting under involved in those of our submission to such a power. The distinction of *Active* and *Passive* obedience, is but a nicety, and if one be not a sin, the other is not. They are in a manner the same thing, derive from the same Principle, and differ but gradually, just as the morning and the noone light do, which derive both from the same planet. For he who takes paines to furnish in a raze, and he who tooke paines to execute the office of a Judge or of a Justice of peace in honest things by vertue of Commissions and Orders from the same supream (but illegall) Magistracy, doe both of them what they doe, by vertue of the same originall submission which is a passive obedience. If this be otherwise, then (according to these authors opinion) we and all our forefathers have sinned, in obeying those actively or passively, who by unjust usurpation have come betwixt us and them, who derive from the first who were in compact, unless the Lapse of time can justify the viciousness of an action (which is impossible) or that we may lawfully obey those who plenarily possesse and protect us, and command us lawfull things.

F I N I S.

ERRATA. p. 2. loose, r. loose. imperceptibly r. imperceptibly. insinuation r. insinuations. p. 2. l. 2. may be not r. may not be, beholding r. beholden, p. 6. heneration, r. generation p. 7. but in one, r. & in one p. 9. understand, r. understood. offices r. officers. p. 10. a businesse, r. business, p. 11. pretends r. pretends thereof r. therefore. p. 12. but it is a contradiction r. is it a contradiction. p. 14. for detain'd r. attain'd for dissolve, r. dissolve. p. 15. best to take heed r. best take heed. p. 16. King r. Kings. p. 17. purpose r. propose. p. 19. sound & swound. p. 22. at last r. at least. p. 31. drive r. derive. p. 33. ply, r. comply, for or, r. nor. p. 34. large, r. subject. p. 39. person r. persons. next r. rest. p. 41. change r. chance. p. 42. true to religion r. to true religion. p. 48. dispench him of it, r. dispench with him for it.

REPRODUCED FROM THE ORIGINAL
IN THE HENRY E. HUNTINGTON
LIBRARY AND ART GALLERY
FOR REFERENCE ONLY.
PERMISSION NECESSARY FOR
REPRODUCTION.